

## 6010.4 OAD P Time and Leave Administration

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GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

OAD P 6010.4 CHGE 22  
April 4, 2008

### GSA ORDER

SUBJECT: Hours of Duty - Overtime

1. Purpose. This order transmits a revision of Chapter 12 for inclusion in the HB, Time and Leave Administration.
2. Background. A review of overtime management controls conducted by the Regional Inspector General for Auditing (Review of Overtime Management Controls in GSA Public Buildings Service, National Capital Region, dated 4/19/2006) identified the "30 hour" overtime rule as ineffective and recommended either the elimination of the rule, or development of a valid means of administering the rule if it was determined to be relevant. The "30 hour" overtime rule requires supervisors and managers to provide written justification to authorizing officials for an employee that works 30 hours or more of overtime during 3 consecutive pay periods. Further review indicated that the "30 hour" rule is no longer relevant and this action rescinds that rule.
3. Explanation of change. Chapter 12, Paragraph 4, c (2) is deleted to rescind the "30 hour" overtime rule, which requires a written justification when an employee works 30 hours or more of overtime in the course of three consecutive pay periods.
4. Instructions. Remove pp. 114 and insert the attached corresponding new page.

Gail T. Lovelace  
Chief Human Capital Officer

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

OAD P 6010.4 CHGE 21  
July 5, 2005

### GSA ORDER

SUBJECT: Compensatory Time Off for Travel

1. Purpose. This order establishes GSA policy on Compensatory Time Off for Travel (travel comp time).
2. Applicability. This order applies to all GSA associates **except** members of the Senior Executive Service and Federal Wage System associates.
3. Revised. A new paragraph 19, "Compensatory Time Off for Travel (travel comp time)," is added at the end of Chapter 1, General Provisions, of the Time and Leave Administration HB, OAD P 6010.4.
4. Nature of revision. The new GSA policy on travel comp time is established in a new paragraph 19 in Chapter 1, OAD P 6010.4, meeting requirements for agency policy under new regulations amending 5 CFR part 550 and establishing a new subpart N, Compensatory Time Off for Travel.
5. Program Objective and Impact. This order establishes GSA policy necessary to implement new regulations entitling employees to a new type of compensatory time off for time earned in a travel status away from the employee's official duty station when such time is not otherwise compensable. This policy covers the processes of documenting, requesting and approving credit, and requesting and approving use of travel comp time. This policy should be

used as a supplement to law and regulations governing travel comp time. It does not repeat them unless necessary for clarity of policy. Guidance on travel comp time regulation, law, policy, and timekeeping procedures will be provided separately.

6. Procedures. Add the new paragraph 19 to the end of Chapter 1, General Provisions, Time and Leave Administration HB, OAD P 6010.4.
7. Instructions. In ch. 1, insert new pp. 59 thru 60.

Gail T. Lovelace  
Chief People Officer

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

OAD P 6010.4 CHGE 20  
July 13, 2003

GSA ORDER

SUBJECT: Time and Leave Administration

1. Purpose. This order transmits a change to Ch. 8 Excused Absence in the HB, Time and Leave Administration.
2. Background. GSA encourages and supports employees who volunteer their efforts, talents, and personal time to their communities. Supervisors can assist employees in participating in volunteer activities through the use of flexible scheduling programs such as alternative work schedules, annual leave, leave without pay. Part-time employment or job sharing are also options that can be used to assist employees. Many official duties, though collateral to an employee's primary responsibilities, are all part of a day's work. Thus, an employee's participation as an EEO counselor, GSA mentor, or key persons for the Combined Federal Campaign or for the annual savings bonds drive, Agency representative on Federal Executive Boards, etc. is an extension of the job and are carried out on duty time. Administrative leave is not required to fulfill these functions.
3. Explanation of change. Chapter 8 is revised to remove outdated information related to volunteer service in GSA.
4. Instructions. Remove Chapter 8 paragraph 22 and insert the attached corresponding new material.

Gail T. Lovelace  
Chief People Officer

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

OAD P 6010.4 CHGE 19  
September 23, 1999

GSA ORDER

SUBJECT: Time and Leave Administration

1. Purpose. This order transmits a revision of ch. 12 for inclusion in the HB, Time and Leave Administration.

2. Cancellation. OAD IL-95-5, Time and Leave Administration, GSA Maxiflex Schedule, dated October 13, 1995, and alternately IL-98-1 is canceled.
3. Explanation of change. Chapter 12 is revised to clarify how alternative work schedules (AWS) apply for members of the Senior Executive Service (SES)
4. Forms. No forms.
5. Instructions. Remove pp. 37 thru 42 and insert the attached corresponding new pages.

Gail T. Lovelace  
Chief People Officer

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

OAD P 6010.4 CHGE 18  
September 26, 1996

GSA ORDER

SUBJECT: Time and Leave Administration

1. This order transmits a revision of ch. 12 for inclusion in the HB, Time and Leave Administration.
2. Cancellation. OAD IL-90-7, Time and Leave Administration, GSA Flexiplace Project, dated July 2, 1990, is canceled.
3. Explanation of change. Chapter 12 is revised to include current policies and procedures for short term work-at-home arrangements, to establish new policies and procedures for periodic and long-term work-at-home arrangements, to establish policies and procedures for telework (telecommuting) center arrangements, resulting in four distinct types of Flexiplace (work-at-home and telework) alternatives.
4. Forms. This order provides for the use of five new forms. Forms can be obtained from the Distribution Center, Fort Worth, Texas.
5. Instructions. Remove pp. 37 thru 42 and insert the attached corresponding new pages.
6. Labor Relations Obligations. Implementation of this order with respect to employees represented by a labor organization is contingent upon completion of labor relations obligations. Management officials should consult with their respective Labor Relations Officers to determine the status of the fulfillment of labor relations obligations.

MARTHA N. JOHNSON  
Associate Administrator for  
Management Services and Human Resources

GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405

OAD P 6010.4 CHGE 17  
October 18, 1991

GSA ORDER

SUBJECT: Time and Leave Administration

1. Purpose. This order revises ch. 8 in the HB, Time and Leave Administration.

2. Explanation of changes.

- a. Ch. 8-2 allows for managerial discretion in basic decisions on the purposes for which employees may be excused.
- b. Ch. 8-22 specifically permits administrative leave for certain volunteer service.

3. Instructions. Remove p. i and ii of the table of contents and pp. 1 thru 4. Insert the attached new p. i and ii, pp. 1 thru 4.1, and pp. 15 thru 17.

CARLENE BAWDEN  
Associate Administrator  
for Administration

## TIME AND LEAVE ADMINISTRATION HANDBOOK

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Figure 1-19. Travel Comp Time Credit Request

## CHAPTER 1. GENERAL PROVISIONS

### 1. Scope.

a. This handbook contains policies and procedures for the administration of leave regulations within GSA and requirements for scheduling employee work time. It incorporates the requirements of laws, Governmentwide regulations, Federal court decisions, and pertinent decisions of the Comptroller General of the United States. While it is intended for general use by all GSA employees, this handbook sometimes incorporates language derived from legislation, regulation, and case law that is necessary to properly state agency policy. It is intended to supplement, not supplant, other personnel reference materials.

b. Supervisors of bargaining unit employees should be familiar with provisions in applicable negotiated agreements concerning leave and hours of duty.

c. General schedule employees are distinguished from wage system employees in this HB as required by legal or regulatory provisions. In addition, full-time, part-time, and intermittent employees are mentioned separately, where appropriate. The Fair Labor Standards Act is treated in whole as it affects time and leave administration in ch. 12.

2. Applicability. All employees of GSA except the Administrator are subject to the provisions of this handbook.

3. Nondiscrimination. The regulations and procedures in this handbook shall be applied equally to all employees without regard to race, color, age, religion, sex, or national origin. Except in par. 12, the use of male or female pronouns in this handbook does not imply or intend any sex discrimination.

### 4. Recording and reporting time and attendance.

a. A record of time in pay or nonpay status must be maintained daily for each employee providing evidence that each employee is entitled to his or her normal pay or to a greater or lesser amount by showing the number of hours of attendance and the nature and length of absences. For complete information on filling out GSA Form 3575, Time and Attendance Record, responsibilities of supervisors and time and attendance clerks for proper reporting, and possible disciplinary action for willful falsification of time and attendance records, please refer to HB, Payroll Operations Timekeeper (COM P 4282.1) and other directives issued by the Office of Finance.

b. All leave taken shall be supported by proper documentation when applicable. Please refer to the abovementioned directive in addition to this HB for information concerning what constitutes proper documentation.

c. Applications for court or military leave shall be supported as provided in chs. 5 and 6.

d. Applications for receiving transferred leave and requests for donating annual leave shall be made as required in par. 9. are covered by HB, Injury Compensation, (OAD P 9810.1).

### 5. Responsibility for administering the leave program.

a. The Director of Personnel (CP) is responsible for developing and establishing procedures and interpreting regulations on leave for application throughout GSA.

b. The Deputy Comptroller for Finance (BC) is responsible for establishing procedures governing attendance and leave reporting and for advising and assisting in the application of those procedures throughout GSA.

c. Heads of Central Office Services and Staff Offices and Regional Administrators are responsible for ensuring that the leave regulations and procedures set forth in this handbook and those of the Office of Finance are followed. In addition to ensuring that supervisors comply with procedures regarding documentation and approval of leave, they are responsible for observing sick leave trends in the various organizational elements under their supervision and for instituting additional safeguards against the abuse of leave where the need is indicated. They are also responsible for approving applications to receive leave transfer donations and assuring that employees are given due consideration in parental and family leave situations.

d. Supervisors are responsible for:

- (1) Granting annual leave, sick leave, leave without pay, and transferred leave;
- (2) Administering the leave regulations in a fair and equitable manner for all employees under their jurisdiction;
- (3) Advising employees regarding leave matters;
- (4) Guarding against the abuse of leave;
- (5) Approving or certifying as correct the leave records of all employees they supervise directly; and
- (6) Any additional delegated responsibilities as specified in the GSA Delegations of Authority.

6. Definitions. As used throughout this handbook, the following terms have the meanings indicated:

- a. Absent without leave (AWOL). An absence from duty that is not authorized or for which a request for leave has been denied. (See ch. 4.)
  - b. Accrued leave. Leave earned by an employee during the current leave year that is unused at any given time in that leave year. (See chs. 2 and 3.)
  - c. Accumulated leave (leave carry-over). The unused leave remaining to the credit of an employee at the beginning of a leave year. (See chs. 2 and 3.)
  - d. Administrative calendar day. When administratively feasible, a calendar day runs from midnight to midnight, but any 24-hour period may be treated as a day. (See ch. 12.)
  - e. Administrative workweek. A period of 7 consecutive calendar days designated in advance. (See ch. 12.)
  - f. Alternative work schedule. Flexible and compressed work schedules established under the provisions of Public Law 99-196 and 5 U.S. Code 6120 et seq. are collectively known as alternative work schedules. (See ch. 12.)
  - g. Basic workday. The hours that comprise in sequence the employee's regular daily tour of duty within any 24-hour period. (See ch. 12.)
  - h. Basic workweek. The 40-hour workweek established for full-time employees. (See ch. 12.)
  - i. Common tour of duty (normal tour of duty). An 8-hour daily tour of duty that is scheduled between 6 a.m. and 6 p.m., Monday through Friday, and at the same hours on each of the 5 days of the calendar week. (See ch. 12.)
  - j. Compressed work schedule. In the case of a full-time employee, any schedule in which an 80-hour biweekly work requirement is scheduled for less than 10 workdays. An example is the 5/4-9 plan, in which the 80-hour biweekly work requirement is scheduled over 9 workdays. (See ch. 12.)
  - k. Contagious disease. A disease requiring isolation of the patient, quarantine, or restriction of movement as prescribed by health authorities. (See chs. 3. and 36 and Comp. Gen. 183.)
  - l. Court leave. Court leave is the authorized absence, without charge to leave or loss of pay, of an employee from work status for jury duty, or for attending judicial proceedings in an unofficial capacity as a witness when the United States, the District of Columbia, or a State or local government is a party. This includes acting as a witness on behalf of a private party in the proceedings. The court or judicial proceedings may be in the District of Columbia; a State, territory, or possession of the United States, including the Commonwealth of Puerto Rico; the Republic of Panama; or the Trust Territory of the Pacific Islands. (See ch. 5.)
  - m. Flexible work schedule. A schedule in which the employee has some choice of working hours within limits established by the agency. An example is a gliding schedule in which the employee has a basic work requirement of 8 hours a day and 40 hours a week, and may select an arrival time each day, changing that arrival time daily within the established flexible time band. (See ch. 12.)
  - n. Full-time employees. An employee who is regularly scheduled to work the number of hours and days (normally 5 days of 8 hours each) required by the administrative workweek established for his or her employment group or class. (See ch. 12.)
  - o. Furlough. An action placing an employee in a temporary nonduty and nonpay status because of lack of work or funds or for other nondisciplinary reasons. (See chs. 4, 6, and 9.)
  - p. Intermittent employee. An employee who is employed less than full time on an irregular or occasional basis with no prearranged schedule of hours or days of work. (See ch. 12.)
- (1) An employee whose appointment is intermittent cannot be considered to have a regularly scheduled tour of duty for purposes of time and attendance reporting or pay and leave administration, regardless of how much time or how regularly the employee may actually be working.
- (2) Employees on intermittent appointments cannot receive leave, night differential pay, paid holidays, or other benefits that employees with regularly scheduled tours of duty may receive. Intermittent status is determined by the type of appointment.
- q. Judicial proceedings.
- (1) The term "judicial proceeding" covers any action, suit, or other proceeding of a judicial nature (including any condemnation, preliminary, informational, or similar proceeding), but does not include an administrative proceeding.
- (2) All stages (preliminary hearing, inquest, trial, or deposition taking) of the proceeding are covered, including hearings and conferences before a committing magistrate, court, or commission, grand jury proceedings and coroners' inquests, and hearings and conferences conducted by a prosecuting attorney to determine whether an information or charge should be made in a case. (See ch. 5.)
- r. Leave day. A day on which an employee, except for being on leave, would have worked and received pay. A leave day is not a nonworkday or holiday established by Federal statute, Executive order, or administrative order.
- s. Leave of absence. Leave of absence is granted for periods during which a member of a reserve component is required to perform inactive duty for training or inactive duty training. A leave of absence may include military leave, annual leave, and leave without pay (LWOP). A leave of absence must be granted upon presentation of proper military orders by an employee who has unused military or annual leave. The granting of extended LWOP is discretionary. However, before extended LWOP is denied, the relative impact of an employee's furlough or separation and any consequent restoration rights should be considered. (See ch. 6.) Leave of absence may also be granted because of a compensable injury (FPM ch. 353, subch. 6). (See OAD P 9810.1.)
- t. Leave year. The period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year. (See chs. 2 and 3.)
- u. Medical certificate. A written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, treatment, or the period of disability of an employee while he was undergoing professional treatment. (See ch. 3.)
- v. Military furlough or separation. Military furlough is a period of unpaid absence when an employee is ordered to extended active duty for general service with the Armed Forces. When

an employee who is a reservist is ordered to an initial period of active duty for training of at least 3 consecutive months under 38 U.S.C. 2024(c), he or she may be granted a leave of absence, furloughed, or separated (5 CFR 353.104 and FPM Letter 630-29). Any employee who is not on a temporary appointment of less than 1 year and who is ordered to active duty under 38 U.S.C. 2021 or 2024(a) or (b) that will exceed 1 year must be separated or furloughed after using up any military leave left (5 CFR 353.104 and FPM Letter 630-29). For a member of a reserve component on extended active duty for training or inactive duty training, furlough or separation may be considered as an alternative to extended leave of absence under 38 U.S.C. 2024(d). (See ch. 6.)

w. Military leave. Military leave is a leave of absence without charge to other leave (e.g., annual leave) or loss of pay that is granted to employees who are members of reserve components of the Armed Forces (including members of the National Guard) on days they are on active military duty or are engaged in field or coast defense training, are on active Federal or State service in aid of law enforcement, or are ordered on parade or encampment as members of the District of Columbia National Guard (DCNG) (5 U.S.C. 6323). Military leave is a right of the employee concerned. If performed for the purpose and within the limitations specified in law, there is no administrative authority to deny such leave (44 Comp. Gen. 224). Military leave is leave without loss of pay, status, seniority, or other leave and is not to be confused with military furlough or leave of absence. (See ch. 6.)

x. Permanent part-time employee. One who is regularly schedule to work a minimum of 16 hours and a maximum of 32 hours each week on a prearranged basis during a specified period of 1 or more days of each administrative workweek. (See ch. 12.)

y. Permanent employee. One whose appointment is without time limitation or for more than 1 year. (See ch. 12.)

z. Regular tour of duty scheduled in advance. This term requires the establishment of a definite and certain time, day, and/or hour of any day during the workweek when an employee regularly will be required to perform duty. For example, an employee who is scheduled in advance to work 8 hours each Monday has a regular tour of duty. On the other hand, an employee who knows in advance that he or she will be working 8 hours in each administrative workweek with no fixed hour of day on which to perform such duty does not have a regular tour of duty scheduled in advance. (See ch. 12.)

(1) For full-time employees, this means a period of not less than 1 week, consisting of 40 hours of scheduled work within each administrative workweek. The days and hours of work scheduled may vary from week to week.

(2) For part-time employees, it means the officially prescribed days and hours within each administrative workweek during which these employees are required to be on duty regularly.

aa. Reserve components. The reserve components of the Armed Forces (referred to as "reserve components") are listed below as defined in 10 U.S.C. 261 and 32 U.S.C. 101. (See ch. 6.) Under this definition, reserve components include both the following reserve and National Guard organizations:

- (1) The Army National Guard of the United States,
- (2) The Army Reserve,
- (3) The Naval Reserve,
- (4) The Marine Corps Reserve,
- (5) The Air National Guard of the United States,
- (6) The Air Force Reserve, and
- (7) The Coast Guard Reserve.

bb. Service suitable for military leave. Employees are eligible for military leave for the following types of service:

(1) Active duty or field or coast defense training. Military leave may be granted when a Federal employee is ordered to active duty or field or coast defense training as a member of a reserve component under 32 U.S.C. 502, 503, 504, or 505 (5 U.S.C. 6323(a)(1)). There is no distinction between voluntary and required active duty for training under 5 U.S.C. 6323 (Comp. Gen. B-208706, Aug. 31, 1983).

(2) Law enforcement. Military leave may be granted when a Federal employee is ordered to active duty to provide military aid to enforce the law as a member of a reserve component in the form of either Federal service under 10 U.S.C. 331, 332, 333, 3500, or 8500 or full-time service for a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States (5 U.S.C. 6323(b)).

(3) Parade or encampment by DCNG. Military leave must be granted to a Federal employee who is a member of the District of Columbia National Guard and is ordered to parade or encampment by the commanding general (Title 39, District of Columbia Code and 5 U.S.C. 6323(c)). Encampment under 39 D.C. Code 607 and field training under 32 U.S.C. 502 and any reasonably connected duty are considered the same under this chapter (44 Comp. Gen. 22 5).

(4) Before extended active duty. An employee who is ordered to extended active duty under 39-U.S.C. 2021 or 2024 (a) or (b) may use up any entitled military leave before separation or furlough (FPM Letter 630-29). (See ch. 6.)

cc. Service unsuitable for military leave. Employees are not eligible for military leave for the following types of service:

- (1) Summer training as members of the Reserve Officers Training Corps (ROTC), when employee may be carried in an annual leave status (52 Comp. Gen. 755);
- (2) Temporary Coast Guard Reserve;
- (3) Participation in parades by members of the State National Guard (ch. 6, subpar. 5c, for exception);
- (4) Training with a State defense organization or State military organization that is not a part of the National Guard, or any other organization created by the State in the absence of the State National Guard during an emergency;

- (5) Inactive duty training, including drills, meetings, and training assemblies as a member of the National Guard or other reserve component;
- (6) Civil Air Patrol, established as a civilian auxiliary of the United/ States Air Force;
- (7) Time taken on a workday to travel to the place where the training is to begin, unless military training orders cover travel time required; and
- (8) Active duty as a commissioned officer in the Reserve Corps of the U.S. Public Health Service. (See ch. 6.)

dd. Summoned. The term "summoned" does not suggest a need for a subpoena but does mean that the summons should be an official written request, invitation, or call from the court or authority conducting the proceeding. It also means that court leave cannot be used for strictly voluntary appearances. The time an employee-plaintiff spends testifying in his or her own behalf does not meet this definition of "summoned" (title 5, U.S.C., section 6322.) (See ch. 5.)

ee. Suspension. An action placing an employee in a temporary nonduty and nonpay status for disciplinary reasons or for other reasons pending inquiry. (See the Administrative Manual (OAD P 5410.1) ch. 3, part 8, Maintaining Discipline.)

ff. Tardiness. The unscheduled absence of an employee at the beginning of a workday. (See subpar. 17, ch. 8 and ch. 9.)

gg. Temporary employee. An employee whose appointment is limited to 1 year or less, or whose appointment is without time limitation, if the appointment is pending establishment of a Civil Service register. (See ch. 12.)

hh. Uncommon tour of duty. This term refers to any of the following:

- (1) An 8-hour daily tour of duty scheduled to begin earlier than 6 a.m. or end later than 6 p.m.;
- (2) A 40-hour basic workweek scheduled to be performed on 5 consecutive days other than Monday through Friday;
- (3) A 24-hour shift; or
- (4) A combination of (1) and (2), above. (See ch. 12.)

ii. Witness service. Witness service is testifying: (1) in an official or unofficial capacity, or (2) producing official records in a judicial proceeding, or (3) being called to give a deposition (although the individual may not have received a summons). (See ch. 5.)

#### 7. Accrual of leave during pay periods.

##### a. Full biweekly pay periods.

(1) Completion of full pay period. To earn leave, an employee must be employed during a full biweekly pay period. The employee is considered to have been employed for a full pay period if he/she is on the rolls on all days falling within the pay period, exclusive of holidays and nonworkdays. For example, Sunday is the beginning of a pay period; Labor Day, Monday, is a holiday. An employee who enters on duty on Tuesday and continues to serve for the remainder of the pay period is considered to have completed a full biweekly pay period even though he/she entered on duty on a Tuesday.

##### (2) Part-time employees.

(a) Any hours in a pay status in excess of 80 in any pay period are disregarded in computing the leave earnings of part-time employees.

(b) A part-time employee must serve under an established tour of duty for each of the two administrative workweeks in each biweekly pay period. No leave is credited for fractional parts of biweekly pay periods either at the beginning or end of an employee's period of service.

(c) A part-time employee who completes a full biweekly pay period may carry over from one pay period to the next those hours of service in a pay status that do not equal the number necessary for a minimum leave credit until sufficient service is rendered to total the hourly credit. However, if the employee changes to a full-time status and he or she has insufficient service credit to earn the minimum of 1 hour, the fractional hours of service are lost because of the change in tour of duty.

b. Pay period other than biweekly. Leave is earned on a pro rata basis for a full pay period when the employee is paid on other than a biweekly pay period basis.

c. Fractional pay periods. If employment is continuous, but an employee's service is interrupted by a nonleave-earning period, he or she may be credited with leave on a pro rata basis for that fraction of a pay period during which the employee was in a leave-earning status. This situation occurs, for example, when an employee is carried in a leave without pay (LWOP) status while in receipt of disability compensation from the Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, or when an employee's tour of duty changes from full-time to intermittent. Depending on an employee's leave category, he or she may accrue one hour of annual leave for each 20-hour, 13-hour, or 10-hour increment of hours worked. (For example, an employee in a 4-hour leave category accrues one hour of annual leave after working at least 20 but less than 40 hours.) In the same way, an employee (regardless of leave category) accrues one hour of sick leave for each 20-hour increment of hours worked. The following table may be used as a guide in determining the amount of pro rata credit for leave:

#### PRO RATA CREDIT FOR LEAVE

Biweekly Pay Period	Accrual Rate		
<u>Workdays/Hours</u>	<u>4 Hours*</u>	<u>6 Hours</u>	<u>8 Hours</u>
1 day/8 hrs	0	0	0



2 days/16 hrs	-----	0	1	1
3 days/24 hrs	-----	1	1	2
4 days/32 hrs	-----	1	2	3
5 days/40 hrs	-----	2	3	4
6 days/48 hrs	-----	2	3	4
7 days/56 hrs	-----	2	4	5
8 days/64 hrs	-----	3	4	6
9 days/72 hrs	-----	3	5	7
10 days/80 hrs	-----	4	6**	8

\* This column may be applied for sick leave purposes.

\*\* Plus 4 additional leave hours at the end of the leave year.

d. Credit reduction because of nonpay absence.

(1) At any time during a leave year that a full-time employee's accumulated absence in a nonpay status totals 80 hours, his/her sick leave credit is reduced by 4 hours and his/her annual leave credit is reduced by either 4, 6, or 8 hours, depending on the employee's leave-earning category.

(2) An employee who is in a nonpay status for the entire leave year earns no leave.

(3) There is no reduction in leave credit for an employee who is in a nonpay status for less than 80 hours in a leave year.

(4) When an employee has one or more breaks in service during a leave year, the sum of all hours in a nonpay status up to the current pay period (other than nonpay status during a fractional pay period when no leave accrues) is calculated to determine the need for reduced leave credit. After credit has been reduced by the appropriate amount, the accumulation of hours in a nonpay status toward further accrual reduction begins again.

(5) The accrual of leave on a pro rata basis is not applicable to cases that are subject to a reduction in leave credit. For example, John Doe is intermittently on LWOP during the months of February through September, at which time his LWOP equals 80 hours. Since he earns 8 hours of annual leave for each full biweekly pay period, his annual leave account must be reduced by 1 leave day. On the other hand, Rhonda Roe is carried on the rolls in a LWOP status while receiving disability compensation from the Office of Federal Employees Compensation and therefore is not entitled to earn any leave during such period of absence. Since she earns no leave, no reduction in leave credit is required. She accrues only leave earned when she is in a duty status, as set forth in the pro rata table.

8. Leave charges.

a. Leave days. Both annual and sick leave are charged to an employee's account only for absence on regular workdays; that is, days on which he or she would otherwise work and receive pay. Leave is not charged for absence on holidays and nonworkdays established by Federal statute, Executive order, or administrative order, except as provided in ch. 2-4d(3).

b. Minimum charge. One-tenth (1/10) of an hour, or 6 minutes, is the minimum charge for annual, sick, court, funeral, transferred, administrative, LWOP or AWOL and additional leave is charged in multiples of 1/10th of an hour. Military leave must be charged in whole days if it is for field or coast defense training (30-day maximum). If military leave is for law enforcement (22-day maximum) it must be charged in the same way annual leave is charged.

(1) If an employee is unavoidably or necessarily absent for less than 1 hour, or tardy, the supervisor, for adequate reason, may excuse him or her without charge to leave.

(2) When an employee is charged with leave for an unauthorized absence or tardiness, he or she may not be required to perform work for any part of the leave period charged against his/her account.

(3) There is no authority to combine two or more tardinesses or other brief absences for the purpose of charging appropriate leave or AWOL on a cumulative basis, nor for the purpose of determining how to treat an absence of a similar nature in the future. No supplementary leave records shall be maintained for this purpose.

(4) For an unapproved or unexcused absence that is treated as an unauthorized absence (AWOL), the minimum amount of time chargeable is 6 minutes (1/10th of an hour) and additional charges must be in multiples of 1/10th. For example, an employee who is absent for 10 minutes can be charged 6 minutes -AWOL, and an employee who is absent for 1 hour and 10 minutes can be charged 1 and 1/10th hours AWOL. An employee who is absent for 5 minutes cannot be charged AWOL.

9. Voluntary leave transfer program. This program allows for employees to voluntarily transfer annual leave under 5 CFR 630 from a GSA employee to an approved leave recipient who is experiencing (or whose family member is experiencing) a medical emergency as specified in the paragraphs below. This new GSA voluntary leave transfer program, as authorized by Pub. L. 100 566, replaces the voluntary leave transfer programs established by Pub. L. 100-202 and 100-440. The new voluntary leave transfer program applies to all employees subject to the provisions of 5 U.S.C., Chapter 63, Subchapter 1, in accordance with Office of Personnel Management (OPM) regulations and the following GSA policy. The voluntary leave transfer program will expire on October 31, 1993.

a. Definitions.

(1) "Agency" means:

(a) An Executive agency, such as the General Services Administration (GSA), as defined in 5 U.S.C. 105;

(b) A "military department," as defined in 5 U.S.C. 102; or

(c) Any other entity of the Federal Government that employs officers or employees to whom subchapter I of chapter 63 of title 5, United States Code, applies. This definition does not include those agencies whose principal function is the conduct of intelligence and counterintelligence activities.

(2) "Employee" has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the government of the District of Columbia.

(3) "Donor" or "leave donor" means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her employing agency.

(4) "Recipient" or "leave recipient" means a current employee whose application to receive annual leave from the accounts of one or more leave donors has been approved by his or her employing agency.

(5) "Family member" means the following relatives of the employee:

- (a) Spouse, parents, spouse's parents, children, adopted children, brothers, sisters, brothers' spouses, sisters' spouses, and
- (b) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(6) "Medical emergency" means a medical condition of an employee or family member of such employee that is likely to require the employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

(7) "Paid leave status under subchapter I" means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under subchapter I of chapter 63 of title 5, United States Code.

(8) "Transferred leave status" means the administrative status of an employee while he or she is using transferred leave. This status occurs during the period after all annual and (if appropriate) sick leave is exhausted, while the recipient is using transferred leave and is not in a paid leave status under subchapter I, and before the medical emergency ends.

(9) "Transferred leave" means annual leave transferred to a recipient from a donor under the voluntary leave transfer program, 5 CFR 630.906.

(10) "Set aside annual leave account" means the separate leave account to which annual leave is credited during transferred leave status.

(11) "Set aside sick leave account" means the separate leave account to which sick leave is credited during transferred leave status.

(12) "Deciding official" means the Head of Service or Staff Office, the Regional Administrator, or official designee who approves or denies a recipient's application to receive transferred leave.

(13) "Workday" means, only for the purpose of meeting the 10-day application deadline, any day excluding Saturdays, Sundays, and legal public holidays.

(14) "Representative" means a personal representative of the recipient who is asked by the recipient to act in his or her behalf in leave transfer matters.

(15) "Regular leave account" means that account to which annual or sick leave under subchapter I of chapter 63 of title 5, United States Code accrues or accumulates.

b. Eligibility for transferred leave. This program is intended to be used for medical conditions in which the employee faces serious economic consequences because of LWOP. It is intended for absences that result from circumstances beyond the employee's control and when there are no reasonable alternatives to the employee's absence from work.

(1) To be eligible to be a recipient an employee must:

- (a) Have a permanent or temporary appointment, with an established tour of duty (employees with intermittent appointments and experts and consultants are excluded);

and

(b) Take (or expect to take) at least 80 hours of leave-without-pay (LWOP) because of an approved medical emergency. This LWOP does not have to be continuous. This unpaid leave minimum is the only factor considered in determining whether the applicant's medical emergency is likely to result in a substantial loss of income. In the case of a part-time employee or an employee with an uncommon tour of duty, this LWOP must be at least the average number of hours of work in the employee's biweekly scheduled tour of duty. The period over which this average is taken will be 26 biweekly tours of duty or whatever lesser period has actually been worked.

(2) Medical emergencies are approved or denied by deciding officials based on their merits, upon review of the recipient application, employee record, and medical certification(s).

(3) The medical emergency of an approved recipient must meet minimum criteria established in this paragraph and OPM regulations. Beyond this minimum requirement, evaluation and verification of the merits of a medical emergency is the responsibility of the leave donor and leave recipient.

(4) An employee who meets all of the conditions under (1), above, is eligible, even if she or he is not affected by an approved medical emergency at the time of application. In the case of a recipient with a noncurrent medical emergency, any transferred leave would be used to substitute for leave without pay (LWOP) or to liquidate advanced leave used for the approved medical emergency.

c. Application of potential leave recipient. Eligible employees must voluntarily apply (or have an authorized representative apply) in writing to the appropriate servicing personnel office through the potential recipient's supervisor, and include the following information:

(1) The name, position title, pay plan, series, grade, and step or pay level, organization, correspondence symbol, telephone number, Social Security number, regional code, and duty location of the potential leave recipient and the name of his or her representative, if any (recipient's representative must be a GSA employee);

(2) A brief description of the nature, severity, beginning date, anticipated duration of, and approximate number of leave hours needed for the medical emergency affecting the potential leave recipient;

(3) If the medical emergency involves a family member, the name and relationship to the employee of the family member and, if not specifically listed under subpar. a(5)(a), above, the reasons why the close association to the employee is the equivalent of a family relationship as required under subpar. a (5)(b);

(4) At the applicant's option, a request that additional leave transfers be accepted from another agency or agencies. This is necessary only if: (a) a family member in another Federal agency requests to donate leave to the recipient, (b) it is determined by the deciding official that requests for leave transfers from GSA donors will not be sufficient to meet the needs of the applicant, or (c) the deciding official determines that acceptance of transferred leave from another Federal agency would further the purpose of the voluntary leave transfer program (If

so, see subpar. i, below.);

- (5) The signature of the potential recipient or the potential recipient's representative, certifying the accuracy of the statements on the application; and
- (6) A certification of the duration and nature of the medical emergency, signed by the responsible medical authority. More than one medical certification may be required by the deciding official upon review of the application. However, GSA will pay for additional medical certifications. Either direct payment or reimbursement is appropriate for this purpose.
- (7) Use of the sample application and approval form in fig. 1-9.1 [Link](#) is recommended for the above information.

d. Information to be provided by potential recipient's supervisor. The potential recipient's immediate supervisor must provide the following information on the employee's application, certify its accuracy, and return the signed application to the applicant:

- (1) A statement of the number of hours of annual and sick leave currently accrued (positive or negative balances) in the applicant's leave accounts;
- (2) A statement of leave without pay (LWOP), unliquidated advanced annual leave, or unliquidated advanced sick leave granted to the applicant that was approved as a result of the medical emergency for which application is being made. Transferred leave may be substituted retroactively for periods of LWOP or used to liquidate advanced sick or annual leave granted to recipients for an approved medical emergency. If such LWOP was granted, the supervisor should provide the period of the LWOP, the recipient's title, pay plan, grade, and step or other pay level during that period. If the medical emergency is for care of a family member, information concerning the liquidation of sick leave is unnecessary; and
- (3) If the recipient's supervisor finds it to be advisable, a separate recommendation that the deciding official request that the applicant obtain an additional medical certification. This additional medical certification must be at GSA expense.
- (4) This information may be included on the sample leave recipient application and approval form shown in fig. 1-9.1. [Link](#)

e. Approval of potential leave recipient's application. Based on the application, any required documentation, and OPM and GSA policy, the servicing personnel office and then the appropriate Head of Service or Staff Office (HSSO), Regional Administrator (RA), or an official designee, as the deciding official, must take the following actions:

- (1) The servicing personnel office must:
  - (a) Note the date the recipient application was received in the servicing personnel office;
  - (b) Review the information on the application and certify that the applicant meets minimum OPM and GSA requirements established for the voluntary leave transfer program under 5 CFR 630 and this handbook; and
  - (c) If these minimum requirements are met, forward the certified application to the HSSO or RA within 3 workdays of application.
- (2) If the servicing personnel officer finds that the applicant, according to the information on the application, does not meet the minimum requirements of OPM or GSA regulations, he or she must return the uncertified application to the applicant within 5 workdays with a statement of the reasons why the requirements have not been met and what, if anything, may be done to meet them before re-application.
- (3) Upon receipt of an application that has been certified by the servicing personnel office, the HSSO, RA, or official designee must:
  - (a) Approve or disapprove the employee's request to be a leave recipient by completing Section V of the recipient application;
  - (b) Enter the approval or disapproval date on Section IV;
  - (c) Forward the recipient application back to the servicing personnel office within 7 workdays of application.
- (4) If the HSSO, RA, or designee has approved the recipient's application, the servicing personnel office must then:
  - (a) Assure that the recipient application is complete;
  - (b) Notify the applicant of the approval within 10 workdays of application by returning a copy of the approved application to the recipient;
  - (c) Inform the recipient that:
    - (i) Approved GSA donors may transfer annual leave to the recipient's leave account.
    - (ii) Upon exhaustion of all annual and (if appropriate) sick leave, transferred annual leave may be requested and, if granted, used by the recipient.
    - (iii) While transferred leave is used the recipient accrues maximum of 5 days of annual leave and 5 days of sick leave to separate set aside accounts at the same rate as if the employee were in a paid leave status under subchapter I (Also see subpar. n. ).
  - (d) Send a copy of the approved application and documentation to the recipient's supervisor, instructing him or her to monitor the status of the recipient's medical emergency and complete the section VII of the recipient's application when the recipient's medical emergency terminates. (Instructions on supervisory monitoring and termination of the medical emergency may be found under subpars. r and s.)
  - (e) Send the recipient information summary (Section IV of the original recipient application) to the address listed in below:

General Services Administration  
Office of Personnel, Room 1100  
Classification and Pay Policy Division (CPC)

18th and F Streets, N.W.  
Washington DC 20405; and

(f) Send the remainder of the original approved application and documentation to the National Payroll Center (NPC) within 10 workdays of application, certifying that the employee is an approved leave recipient and that leave may be transferred to the employee's account from approved leave donors.

(5) The NPC will take appropriate action to provide for the transfer of leave from GSA donors to the recipient's account and maintain up-to-date information on all approved GSA recipients and donors. If the transfer of leave from another agency is requested, see subpar. i, below.

(6) If the HSSO, RA, or designee has disapproved the recipient's application, the servicing personnel office must:

(a) Enter the approval or disapproval date on the recipient information summary (Section IV of the recipient application) and send it to the address shown in subpar. 4(e), above;

(b) Notify the applicant of the disapproval within 10 workdays of application by returning the remainder of the application, required documentation, disapproval, and any reasons for disapproval to the applicant;

(c) Inform the applicant of the appeal procedures provided in subpar. f, below; and

(d) Retain a copy of the application, required documentation, disapproval, and any reasons for disapproval for 30 days in case of appeal.

(7) Upon receipt of the recipient information summary, Classification and Pay Policy Division (CPC) will provide information about the recipient to potential leave donors. This information will be in the form of a list of approved GSA recipients that may include the following items: recipient's name, telephone number, correspondence symbol, duty location, and number of leave transfer hours needed. Additional information may be obtained directly from the recipient.

(8) Other publication of an approved leave transfer recipient's name, organization, and other information not subject to Privacy Act restrictions may be made through official correspondence with the recipient's permission. Use of reproduction facilities and materials is permissible with management approval.

(9) The sample leave recipient application appearing in fig. 1-9.1 [Link](#) may be used to document all of the information to be provided by the applicant and the immediate supervisor, for medical certification, for certification by the servicing personnel officer, and approval or disapproval, and reasons for disapproval (if any), by the HSSO or RA.

f. Appeal from disapproval. An applicant may appeal the disapproval of an application for leave transfer. The appeal must be in writing and state the reasons for appeal (for example, misapplication of GSA or OPM regulations). If the applicant is a regional employee, appeal must be made to the Associate Administrator for Congressional and Industry Relations (AL). If the applicant is a Central Office employee, appeal must be made to the Associate Administrator for Administration (C), except that, if the applicant is an employee of the office of the Inspector General, appeal is to the Inspector General (J). The written appeal must be received by AL, J, or C within 15 calendar days of notification of the application's disapproval. An appeal determination by AL, J, or C must be provided to the applicant or authorized representative within 30 calendar days after receipt of the written appeal. A decision by AL, J or C constitutes GSA's final administrative determination concerning the employee's leave transfer recipient application.

g. Request by a GSA employee to transfer leave. Upon approval of a recipient's application, requests to transfer annual leave to the recipient's leave account will be accepted by the potential GSA donor's immediate supervisor, who will approve or disapprove the request based on the following criteria.

(1) Requests by a GSA donor to transfer annual leave from the donor's leave account to a recipient's leave account must:

(a) Be made in writing to the donor's supervisor;

(b) State the GSA donor's name, Social Security number, position title, pay plan, series, grade and step (or pay level), organization, correspondence symbol, duty location, and must be signed and dated;

(c) State the recipient's full name, organization, correspondence symbol, regional code, and duty location;

(d) State the amount of annual leave desired for transfer to the above recipient in whole hours and whether from an accrued or restored leave account. This action may not be revoked by the donor; and

(e) Complete the donor information summary.

(f) It is recommended that donors use fig. 1-9.2, [Link](#) Sample leave transfer request, when they are providing the above information to supervisors.

(2) All or any portion of the leave specified in a request to transfer annual leave may be approved or disapproved by the immediate supervisor in accordance with the following criteria:

(a) No leave from a donor's leave account may be transferred to the leave account of the donor's immediate supervisor. The transfer of leave to a supervisor who does not directly supervise the donor is permissible.

(b) In any one leave year, a leave donor may donate no more than one-half (1/2) of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made and that is available for use by the donor. (For example, for category A: 52 hours, for category B: 80 hours, and for category C: 104 hours of annual leave. For only the leave year beginning January 1, 1989, those amounts are 54, 83, and 108. See FPM Bulletin 630-54, dated April 6, 1989.)

For example: An employee who has an annual leave balance of 80 hours receives 6 hours of annual leave for each full biweekly pay period during the first half of the leave year. In May of that year the employee applies to donate 100 hours of annual leave. It is projected that halfway through the year the employee will begin to earn 8 hours of annual leave per pay period. Therefore, it is projected that the employee will accrue 182 or  $(13 \times 6) + (13 \times 8)$  hours of annual leave during that leave year. Half of that amount, or 91 hours, may be donated during one leave year. However, since the employee has an annual leave balance of only 80 hours, that is the maximum donation possible at that time. Additional donations up to the maximum of 91

hours may be made during the rest of that leave year.

(c) A leave donor who is projected to have annual leave that otherwise would be subject to "use or lose" forfeiture at the end of the leave year under 5 U.S.C. 6304(a) may donate no more than the lesser of:

(i) The amount of leave allowable under (b), above; or

(ii) An amount of available leave equal to the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

For example: At the time of leave transfer donation in December, an employee has a total of 120 hours in excess of the 240 hour annual leave ceiling, which would be forfeited as "use or lose" leave under 5 U.S.C. 6304(a) if no leave is taken during the remainder of the leave year. This employee is in leave category "C," earning 208 hours of annual leave per year. Nonetheless, the maximum donation allowable for this employee is less than 104 hours. At that time, there are only 80 hours remaining in the employee's leave year. In addition, since the employee is scheduled to take 16 hours of leave before the end of the leave year, he or she has only 64 hours of work remaining in the leave year at the time of donation. At that time the employee may donate a total of no more than 64 hours of annual leave to a recipient or recipients. Notwithstanding this limitation on donation, the employee later may apply for and be granted additional annual leave for the remainder of the leave year with no affect on prior donations.

(d) The limitations on donating leave under (b) and (c), above, may be waived in accordance with 630.908(c) under the following unusual circumstances:

(i) The donor is a family member of the recipient; or

(ii) Except for waiver of the limitations under (b) and (c), above, transferred leave donated both within and outside GSA to the recipient would not be sufficient to meet the need, and the prospective donor would have at least 120 hours of accrued annual leave remaining in his or her account after donation.

(e) Leave approved for transfer may be taken out of either a donor's regular leave account, a restored leave account, or both. The donor should specify which account(s) should be used and how much leave should be transferred from each account in the leave transfer request. Regardless of the type of leave account, donations are subject to the limitations expressed in (a) thru (d), above.

(3) For documenting these determinations, use of the sample leave recipient application form in fig. 1-9.1 [Link](#) and the sample leave transfer request in fig. 1-9.2 [Link](#) is recommended.

(4) GSA will allow donations of leave only. In no case may a donor sell leave or receive money, items of value or other consideration for the leave donated.

h. Providing recipient information to potential donors. Based on the information entered on the recipient information summary attached to the leave recipient application and the donor information summary attached to the leave transfer request, the Classification and Pay Policy Division (CPC) of the Office of Personnel will provide a central listing of GSA recipients to potential leave donors upon request and distribute the list periodically to HSSO's and RA's. To the extent the information is available, the listing will include the following information about each recipient:

- (1) Recipient's name, telephone number, and correspondence symbol;
- (2) Projected amount of transferred leave needed by the recipient at the time of application;
- (3) Current amount of transferred leave donated; and
- (4) current amount of transferred leave used.

i. Accepting leave donations from other agencies. Upon approval (or at a later time by the same authority) by the RA, HSSO, or designee of a recipient's application for leave transfer and request by the recipient, the RA, HSSO, or designee must determine whether GSA will accept transferred leave for the recipient from other Federal agencies under certain circumstances. In any case, GSA must accept leave approved for transfer to a GSA recipient from any of the recipient's family members in another agency. In addition, the deciding official may approve acceptance of other transferred leave from another agency if, in the judgment of the deciding official:

- (1) The amount of leave transferred from donors in GSA may be insufficient to meet the needs of the recipient, or
- (2) Acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

j. Processing leave donations from other agencies. Upon approval of a GSA recipient for donations from other agencies under subpar. i, above, requests for the transfer of leave to a GSA recipient from donors in other agencies may be directed to the NPC for crediting to the recipient's account. Upon receipt of such requests, NPC will inform the recipient's timekeeper. These requests must be accompanied by a Record of Leave Data (SF1150) or equivalent documentation. CPC must be provided a copy of the SF-1150. The SF-1150 must include the following information:

- (1) Confirmation of the approval of the donor request, with a notation in the remarks that it is for leave transferred to a GSA recipient in accordance with 5 CFR 630.906(f); and
- (2) The donor's name, Social Security number, and amount to be transferred from the donor's account to the recipient's account.

k. Requests for leave donation from GSA to other agencies. A GSA donor who wishes to donate leave to a recipient in another agency must:

(1) Obtain certification of the approval under the voluntary leave transfer program of that recipient by the other agency. The certification of approval may be in the form of a memorandum, letter, or agency form and must include:

- (a) Signature of the official in the recipient's agency who is authorized to approve recipients under the voluntary leave transfer program;
- (b) The address to which the leave transfer information may be sent;

- (c) The recipient's name;
- (d) The recipient's Social Security number or other identifying number; and
- (e) Any other information necessary for transferring leave to the recipient.

- (2) Have the certification included with the approved leave transfer request and sent directly to the following address:

National Payroll Center (6BCY)  
1500 E. Bannister Road  
Kansas City, MO 64141

I. Transferral of donated leave to other agencies. Upon receipt of the documentation of the non-GSA recipient's approval and approval of the GSA donor's leave transfer request, an SF1150, Record of Leave Data, will be prepared in the recipient's name and sent to the address provided. A statement will be provided under the "Remarks" section of the SF-1150 that describes how much leave is transferred and to whom and from whom it is transferred.

For example: "This authorizes the transfer of 24 hours of annual leave from John Q. Doe, SSN: 999-99-9999, to Jane V. Smith, in accordance with the voluntary leave transfer program under 5 CFR 630.906." (The recipient's agency may establish additional requirements for donation to recipients in that agency.)

m. Use of transferred annual leave. The use of transferred annual leave is subject to all the conditions and requirements imposed by chapter 63 of title 5, United States Code, Part 630 of the Code of Federal Regulations, and the HB, Time and Leave Administration (OAD P 6010.4) on the use of annual leave accrued under 5 U.S.C. 6303. A leave recipient may use transferred leave in the same manner and for the same purposes as if he or she had accrued the annual leave under 5 U.S.C. 6303, provided that:

- (1) Except as provided under subpar. n(l), below, annual leave that accrues to the account of the leave recipient shall be used before any transferred leave (except for annual leave accrued under 5 U.S.C. 6337 before it is transferred from the set aside account);
- (2) Except as provided under subpar. n(2), below, sick leave that accrues to the account of the leave recipient with an approved medical emergency that does not involve a family member shall be used before any transferred leave;
- (3) Transferred leave under this program may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a). (This refers to the normal 30- or 45-day maximum limitation applying to those not in the Senior Executive Service);
- (4) Transferred leave may not be re-transferred to another leave recipient, except as provided under subpar. t(5);
- (5) Transferred leave may not be included in a lump-sum payment upon retirement or separation under 5 U.S.C. 5551 or 5552;
- (6) Transferred leave may not be recredited to an employee's leave account upon reemployment with a Federal agency; and
- (7) Transferred leave may be used currently or substituted retroactively for LWOP or used to liquidate an indebtedness for advanced sick or annual leave granted to an approved leave recipient for the approved medical emergency.
- (8) Under the above provisions, an approved recipient must use annual, sick, and transferred leave in the following order of priority:
  - (a) Any annual leave (except for annual leave accrued to a set aside account under 5 CFR 630.907(a) before it is transferred to a regular account);
  - (b) Any sick leave (except for sick leave accrued to a set aside account leave under 5 CFR 630.907(a) before it is transferred to a regular account), for recipients whose medical emergency does not involve a family member;
  - (c) Any transferred annual leave for the duration of the approved medical emergency, as transferred, and granted;
  - (d) Any transferred annual leave in substitution for LWOP that was granted for the approved medical emergency;
  - (e) Any transferred annual leave in liquidation of advanced annual or sick leave granted for the approved medical emergency;
  - (f) Any advanced sick leave for a medical emergency not involving a family member or advanced annual leave for any medical emergency, as approved in accordance with the maximum limitations and other criteria expressed in this handbook, requested and granted; and
  - (g) Any approved LWOP.

(9) In the retroactive substitution of transferred leave for LWOP, the recipient will be paid at the rate of basic pay in effect during the Period of the LWOP. Benefits that would have otherwise accrued to the employee in a pay status will accrue to the employee for any period of substitution of transferred leave for LWOP.

n. Accrual of leave during transferred leave status. While an employee is in transferred leave status, annual and sick leave shall accrue to separate set aside accounts of the employee at the same rate as if the employee were in a paid leave status under subchapter I, except that:

- (1) The maximum amount of annual leave that may accrue to an employee (in the set aside annual leave account) while in transferred leave status may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty as in subpar. b(l)(b));
- (2) The maximum amount of sick leave that may accrue to an employee (in the set aside sick leave account) while in transferred leave status may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of work in the employee's weekly scheduled tour of duty averaged over 26 biweekly tours of duty or whatever lesser period has actually been worked); and

(3) After the 40-hour limits for the set aside annual and sick leave accounts are reached, no further leave will accrue to the recipient until a duty status occurs or the medical emergency terminates under one of the conditions in subpar. r.

o. Periods of recipient duty status during emergency. Notwithstanding subpar. n, above, if a recipient works after beginning a period of transferred leave status, annual and sick leave are accrued to the regular annual and sick leave accounts under paid leave status under subchapter I for this period and not to a set aside account. Annual leave accrued in this manner must be exhausted before any later use of transferred leave. If the recipient's medical emergency is for care of a family member, there is no requirement that the sick leave accrued in this manner be exhausted before later use of transferred leave.

p. Use of leave earned during transferred leave status. The annual and sick leave accrued while in transferred leave status will not be available for use until it is transferred to the employee's regular annual and sick leave accounts, effective on the first day of the first pay period beginning after the termination of the medical emergency. If the employee's medical emergency terminates because the employee's Federal service is terminated, no leave will be transferred from the employee's set aside leave account.

q. Accounting for and documenting transferred leave. The Office of Finance has responsibility for developing guidance for timekeepers on accounting for and documenting transferred and restored leave. However, this Office of Personnel policy sets forth the procedures and sample forms to be used in recipient application, personnel certification, approval, and termination, as well as those for donation. The following broadly describes how the two model forms included in this chapter (fig. 1-9.1 [Link](#) and fig. 1-9.2 [Link](#)), the SF-1150, Record of Leave Data, and other documentation are used to document transferred leave activity. Please also refer to appropriate office of Finance guidance for timekeepers.

(1) Generally:

(a) The recipient's NPC payroll clerk receives and retains originals of all recipient application and donor documents necessary to assure that donated and restored leave accounting is in accordance with OPM regulations and GSA policy and to document later reporting to OPM.

(b) Approved recipient applications for leave transfer and approved donor requests for leave transfer or SF 1150's (for donations from other agencies) must be sent to the NPC at the time of approval to officially document leave recipient and donor status and to be used for later reporting to OPM. All documentation is filed in the recipient's folder.

(c) NPC reports periodically to the office of Personnel on leave transfer activity based on unique NPC records.

(d) Only used transferred leave is documented on the GSA Form 3575 as transaction code 85. The reduction in a donor's annual leave account resulting from a leave donation will be documented by the GSA Form 873 and subsequent annual leave reduction on the GSA Form 975, Pay and Leave Statement. Leave donations are not recorded on the GSA Form 3575.

(e) Donated annual leave may be transferred in increments of 1 hour.

(f) In accordance with subpar. t, below, NPC will provide for:

(i) Calculating unused transferred leave to be restored to donors upon termination of a medical emergency,

(ii) Locating GSA and non-GSA donors who are due restored leave, and

(iii) Restoring leave to the appropriate GSA and non-GSA donors and notifying their timekeepers of the restoration, if within GSA.

(g) Any leftover leave that cannot be restored in accordance with subpar. t, below, is lost.

(2) Upon receipt of the approved Donor Request form, the recipient's payroll clerk:

(a) Notifies the leave recipient's timekeeper of the approved leave transfer by sending him/her either a copy of the Donor Request form or equivalent. (This will document the deposit of donated leave in the recipient's leave transfer account.)

(b) Sends a copy of the donor information summary portion of the donor request form and copy of any donation documentation (SF-1150 or equivalent) from other agencies to the following address.

General Services Administration  
Office of Personnel, Room 1100  
Classification and Pay Policy Division (CPC)  
18th and F Streets, N.W.  
Washington DC 20405

(3) The recipient's timekeeper:

(a) Provides all information necessary for completing section III of the recipient application for the recipient's supervisor's signature;

(b) Retains a copy of the approved recipient application;

(c) Documents leave donation deposits to the recipient's leave transfer account by entering the amount of donated leave specified by NPC as a cuff record on the back of the GSA Form 873, Annual Attendance Record;

(d) Accounts for periods of recipient leave transfer status, paid leave status, and duty status and documents annual and sick leave accrual and usage according to subpars. m, n, o, and p;

(e) Documents leave transfer usage by debiting the cuff record and recording transaction code 85 on the Time and Attendance Record, GSA Form 3575; and

(f) Notifies NPC when the recipient's medical emergency terminates by having the recipient's supervisor complete and sign section VII of the timekeeper's copy of the recipient application and sending the entire application to NPC in accordance with subpar. r, below.

r. Termination of medical emergency. A medical emergency affecting a GSA recipient shall terminate:

- (1) When the recipient's federal service is terminated;
- (2) When the recipient transfers from GSA to an agency or organization operating a voluntary leave bank program;
- (3) At the end of the biweekly pay period in which:
  - (a) The recipient's supervisor determines, after written notice and opportunity for the recipient (or representative) to answer orally or in writing, that the leave transfer recipient is no longer affected by a medical emergency (At the recipient's request, this determination may be reviewed by the HSSO or RA.); or
  - (b) The supervisor receives written notice from the recipient or representative that the recipient is no longer affected by the medical emergency (The recipient must notify his or her supervisor immediately when the approved medical emergency ends.); and
  - (c) There is no remaining unsubstituted LWOP or unliquidated annual or sick leave that resulted from the medical emergency and that the recipient wishes to substitute or liquidate with transferred leave remaining in his/her account; or
- (4) At the end of the biweekly pay period in which GSA receives notice that OPM has approved the recipient's application for disability retirement under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

s. Monitoring by the recipient's supervisor. The recipient's supervisor shall continuously monitor the status of the medical emergency affecting the recipient. The supervisor will ensure that:

- (1) Additional medical certifications are obtained (to be paid for by GSA) when the continuation of the medical emergency is in doubt;
- (2) If the medical emergency terminates under one of the conditions in subpar. o above, the supervisor will complete and sign Section VII of the his/her copy of the recipient application and send it to NPC, so that no further requests for transfer of leave to the recipient may be granted and remaining transferred leave may be restored.

t. Restoration of unused transferred leave to donors. Upon termination of the approved medical emergency, any transferred annual leave remaining to the credit of the recipient shall be restored to the annual leave accounts of all donors who are currently employed by a Federal agency and subject to chapter 63 of 5 U.S.C. on the date of the restoration in accordance with the procedures that follow. Notice of this restored leave will be sent to the GSA donor's timekeeper by NPC. Leave that was transferred to a GSA recipient from an employee of another agency in accordance with subpars. i and j, above, must be restored to the non-GSA employee in accordance with the same provisions. (An SF-1150, with a notation that it is for restoring leave transferred from a non-GSA donor in accordance with 5 CFR 630.906(f), may be used for this purpose.)

- (1) The leave to be restored to each leave donor will be calculated as follows:
  - (a) Determine the total amount of transferred leave remaining in the recipient's leave account;
  - (b) Divide this amount by the total number of hours of annual leave transferred to the recipient;
  - (c) Multiply the ratio obtained above by the total number of hours of leave transferred by each eligible leave donor; and
  - (d) Round the result obtained above to the nearest 1/10 of an hour of leave to obtain the total to be restored to the leave donor; except that
  - (e) If the total number of unused hours of leave remaining in the recipient's account is exceeded by the total number of leave donors, then no leave shall be restored.
- (2) However, in no case shall the total number of leave hours restored exceed the total number of leave hours transferred.
- (3) Any transferred leave that cannot be restored to leave donors in accordance with the above procedures is not transferred to the recipient's annual leave account nor available for the recipient's use.
- (4) If the leave donor retires from the Federal service, dies, or is otherwise separated from Federal service before restoration, no leave will be restored.
- (5) At the election of the leave donor, transferred leave to be restored to the leave donor under these provisions may be restored by:
  - (a) Crediting the restored leave to the leave donor's annual leave account in the current leave year;
  - (b) Crediting the restored leave to the leave donor's annual leave account effective as of the first day of the following leave year; or
  - (c) Donating such leave in whole or in part to another recipient. If donation of part of this leave is made to another recipient, the donor may elect to have the remainder credited in accordance with (a) or (b), above.
- (6) Transferred leave restored under 5(a) or (b), above, is subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the year in which the restored leave is credited to the leave donor's annual leave account.

u. Recipient's transfer to another agency. Upon transfer of a recipient to another agency any unused transferred leave credited to the recipient's account while the recipient was a GSA employee will transfer with him or her and continue to be available for use as transferred leave after transfer to the new agency. Upon transfer to another agency, the employee may not receive additional transferred leave until he or she is approved under that agency's leave transfer policy requirements.



v. Prohibition of coercion. An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right the employee may have with respect to donating, receiving, or using transferred leave.

w. Abuse and disciplinary action. A leave recipient, potential leave recipient, or leave donor who intentionally lies, misrepresents the facts, or otherwise attempts to obtain or make leave donations under false pretenses will be subject to disciplinary action.

x. Privacy Act Protections. Personal information provided by those applying to be recipients and donors, such as medical information, is subject to the Privacy Act provisions.

10. Enforced leave. Situations suggesting the need for enforced leave must be treated individually in consultation with an employee relations and/or labor relations specialist in the servicing personnel office. Such situations are often of a sensitive nature and require reference to a complex body of case decisions. For information on adverse actions implications, refer to GSA directives that prescribe adverse action policy and procedures, to delegations of authority, and to negotiated agreements. Examples falling into this category include situations involving:

- a. An emergency constituting an immediate threat to Government property or to the well-being of the employee, his/her fellow-workers, or the public;
- b. An employee under investigation when it is in the interest of the Government to have the employee off the job preliminary to a determination to suspend or remove;
- c. A clear disciplinary situation; or
- d. A nondisciplinary situation when an employee is not "ready, willing, and able to work."

11. Refunding advanced leave.

a. An employee may not be advanced annual or sick leave if it is known at the time that he or she will not return to duty. The provisions for advances apply only to employees whose continued employment is contemplated when annual leave is advanced, or whose employment will be continuing in the event of recovery when sick leave is advanced. (See 25 Comp. Gen. 874.)

b. It is in the interest of the Government to permit an employee to liquidate advanced sick leave at the earliest opportunity; therefore, it may be liquidated by subsequently earned sick leave, by a charge against annual leave (providing this action is not for the purpose of avoiding a forfeiture of annual leave at the end of the leave year) or by a refund upon separation.

c. Normally, other than for the liquidation of advanced sick leave indebtedness, retroactive substitution of annual leave for regular sick leave is not authorized. (See chs. 3-7b and c.) However, under rare circumstances agencies have the authority to approve substitutions involving regular sick leave (e.g., when an employee has an extensive period of sickness at the end of the leave year and would otherwise forfeit annual leave). (See Comp. Gen. B-176093, July 10, 1972 and B-178583, June 14, 1973.)

d. When an employee has been granted advanced annual or sick leave and is separated before that leave is repaid, the value of the leave is recovered from any pay due. A refund is not required, however, if the separation is due to: death, disability retirement, entrance into military service with restoration rights, or resignation or separation because of disability that prevents returning to duty or continuing in the service. The Central Office or Regional Personnel officer determines whether disability is the basis of the separation based on acceptable - medical evidence. (See 5 CFR 630.209.)

e. Advanced sick leave is carried forward and charged against subsequently earned sick leave unless liquidated as specified in c, above.

f. When absence in a nonpay status results in a final debit in the annual leave account of a full-time employee whose appointment is not limited to 1 year or less, the annual leave debit will be carried forward for charge against annual leave earned in the following year, until the debit is liquidated.

g. An employee is required to refund the full amount of any leave that may have been credited and/or used in excess of entitlement because of administrative error. As specified in GSA Order, COM 4200.1, Waiver of claims for overpayment of pay and allowances, repayment may be waived under certain circumstances. If repayment is not waived, the employee may refund the excess leave under one or more of the following conditions:

- (1) Lump-sum payment in dollars equivalent to the dollar value of the leave at the time it was used;
- (2) Lump-sum payment in an equivalent amount of accrued leave;
- (3) Installment payment in dollars equivalent to the dollar value of the leave at the time it was used; or
- (4) Installment payment in leave; that is, as a charge against later-accruing leave.

The purpose of these options is to provide for repayment without imposing a significant financial hardship on an employee or requiring the loss of all accrued leave.

12. Absences for parental and family responsibilities. Absences due to parental and family responsibilities may result in unusual leave requests by employees and may require special attention on the part of the supervisor. (See FPM chapter 630, subchapter 13, Leave for Parental and Family Responsibilities.)

a. Parental or family leave. An understanding of parental or family leave must be based on the following presumptions:

(1) The general terms "parental leave" or "family leave" used in this paragraph to describe leave for absences due to parental and family responsibilities are not specific leave categories in their own right. They are made up of one or more of the following specific leave categories: sick leave, annual leave or LWOP.

(2) As these general terms are used here, parental leave and family leave refer to periods of leave granted for the reasons described in subpars. f thru i.

(3) The information in this paragraph is intended to supplement, not replace, guidance found in the chapters covering sick leave, annual leave, and LWOP. These chapters, as well as ch. 1, should be used to determine the latitude available to the employee and supervisor in requesting and granting parental or family leave as well as to obtain detailed information on leave requesting, granting, advancing, documentation, etc.

b. Flexibility in leave granting. Procedures for granting sick leave, annual leave, and LWOP remain the same, whether for the reasons expressed here or for other reasons. However,

supervisors and managers are expected to demonstrate greater flexibility and compassion in their leave granting discretion when parental or family leave is requested. They should try to find ways to balance organizational goals with employees' needs for parental or family leave.

c. Cooperation in planning and granting leave. An employee who needs to make use of parental or family leave has a responsibility to cooperate with his or her supervisor so that organizational goals, as well as parental or family needs, may be met. Specifically, the employee should request leave as far in advance as possible and specify the reason for requesting leave on an SF 71, "Application for Leave." This will enable the supervisor to make necessary adjustments to cope with the resulting absence. Also, it should be remembered that any prolonged absence can make it difficult to meet organizational objectives. Managers and supervisors should inform employees who have parental or family responsibilities that their specific needs will be considered in the decision to grant leave. Any reasonable and equitable accommodation of employee's parental and family leave needs should be considered as long as mission accomplishment is not adversely affected. The improvement of morale and the retention of experienced and productive employees in the long run are likely to promote the achievement of organizational goals.

d. Type of absence covered. Parental or family leave is intended for meeting child care needs and the special needs of expectant and new parents and new adoptive or foster parents. Other absences resulting from a need for a parent's presence at child-related activities may also be considered parental leave. In addition, care for disabled family members also falls into the area of parental and family leave.

e. Continuing employment obligation. Unless there are other valid reasons for terminating employment (such as expiration of appointment, cause, or other reasons unrelated to parental or family leave), GSA has an obligation to ensure continued employment to those returning employees for whom extended leave has been approved.

f. Pregnancy and childbirth. The circumstances of each individual pregnancy and birth will determine how leave plans need to be arranged to fit the special needs of the mother, child, and family.

(1) The Pregnancy Disability Amendment (Pub. L. 95-552) states that pregnancy must be treated the same way as any other short-term disability. It also states that employers may not set an arbitrary date at which -maternity leave must begin. Many women may be able to work right up to their expected date of delivery. Others may need to stop work at some point for the sake of their health and that of the unborn child. Sick leave, annual leave, or LWOP may be used for this purpose.

(2) GSA supervisors and managers should always be aware of working conditions or strenuous requirements in the work place that could have an adverse affect on the health of an expectant mother. If some doubt about the health of the expectant mother exists, this subject should be discussed with her and a representative from the operating personnel office. If an expectant mother, after consulting her doctor, requests a change in duties, every reasonable effort should be made to accommodate her. A doctor's medical certification of the nature of the limitations may be requested.

(3) Sick leave is appropriate for the periods of incapacitation due to pregnancy, delivery, and recuperation. Managers should bear in mind that recuperation from the effects of a Caesarean delivery may take longer.

(4) A new mother may need time beyond her recuperation period to adjust to the new family member, and both parents may need time to develop a close relationship with the infant. Additional responsibilities may also fall to the new father, who may be needed at home to attend to household duties or to care for the mother and the newborn or other children. Annual leave or LWOP are appropriate for this type of absence.

g. Adoption and foster care. Adoption is often a long and arduous process for prospective parents. Adoptive parents often must make a commitment to stay home with the adopted child for the first several months. This requires a flexible and compassionate attitude in leave-granting during this time, giving these parents the same consideration as natural parents. Sick leave for this purpose is not appropriate. Annual leave and LWOP are appropriate for adoptive and foster parents during this important initial period with their children.

h. Child care. Parents must take time off for visits to pediatricians for well-baby care. These visits will be frequent at first and less frequent as the child grows older. The leave periods are for a few hours or a day at a time. While they should be scheduled in advance, they are not easily postponed. Children's routine illnesses will cause parents to take more unscheduled leave than other employees. These illnesses are usually short-term. Annual leave and LWOP are appropriate for this type of absence. A child's contagious disease (as defined in ch. 1) may require the longer-term absence of a parent. As with any contagious disease, those who must provide care may be granted sick leave, annual leave or LWOP. Children with mental or physical disabilities create an enormous additional responsibility that should be given consideration in granting annual leave or LWOP.

i. Other parental and family responsibilities.

(1) Managers should be reasonably flexible in granting annual leave and LWOP for absences due to teacher's conferences, school plays, pageants, sporting events, and similar activities that mean much to a parent-child relationship. These absences should usually be scheduled in advance.

(2) A parent may be required to request unscheduled annual leave or LWOP because of the unannounced absence of a sitter. The manager or supervisor should be prepared to be flexible in this event.

(3) An employee may need to attend to the medical and personal needs of an elderly or infirm family member. Annual leave and LWOP are appropriate for this purpose.

j. Other references. Since regulations and policies may not provide for supervisory discretion in the granting and use of annual leave, sick leave, and LWOP under certain circumstances, the employee and supervisor or manager should refer to the chapters in this handbook that cover the appropriate kind of specific leave category. They should also refer to ch. 8, Excused Absences, especially subpar. 8-3d on day care visits.

13. Absence of disabled veterans.

a. Disabled veterans must be granted sick leave or annual leave, as appropriate, or LWOP, if necessary, for medical treatment or examination upon presentation of an official statement from a duly constituted medical authority that such treatment or examination is required. It should be noted that this is an exception to the rule that granting leave or LWOP is a matter of administrative discretion. (See E.O. 5396, July 17, 1930, and Comp. Gen. B-188012, 1977.)

b. The granting of such leave is contingent upon the veteran giving prior notice of the period during which his/her absence for treatment will occur.

c. Also see ch. 8, Excused Absences, subpars. 10b and c for official medical examinations and treatment and Armed Forces physical examinations.

14. Absence on convalescent leave.

a. Any employee who, while serving abroad, sustains injuries from physical violence and unavoidable involvement in wars, guerilla and military insurgent situations, or localized hostile

mob actions, is entitled to be retained in full-pay status without charge to earned leave or LWOP while necessary hospitalization and related care are furnished for a 1-year period following such injury.

- b. Excused absences during the 1-year period should be limited to those required for treatment, recuperation, or both. Other absences, if any, are subject to normal leave regulations.
- c. Grants of convalescent leave must be supported by an official statement from a duly constituted medical authority that treatment or recuperation, or both, are required.

15. Absence without leave (AWOL).

- a. Absence without leave (AWOL) is an absence from duty that is not authorized or approved or for which a request for leave has been denied.
- b. The employee receives no pay for the period of AWOL and disciplinary action may be taken in accordance with the GSA Administrative Manual, ch. 3, pt. 8 (OAD P 5410.1).
- c. If it is later, determined that the absence without prior authorization was excusable, or that the employee was ill, the charge to AWOL may be changed to annual or sick leave.

16. Leave-free travel time. An employee serving outside the United States who is entitled to earn 45 days of annual leave may be granted leave-free travel time for going from his duty post to his place of residence and for returning to that post, limited to one grant of leave-free travel time in any 24-month period.

17. Brief absence, including tardiness. Situations in which extremely severe weather or other unusual conditions prevent or delay an employee's reporting for duty or cause early dismissal are discussed in ch. 9. Tardiness is also discussed in ch. 8.

a. Absences of less than 1 hour.

(1) At the discretion of the supervisor, employees may be excused without charge to leave or loss of pay for unavoidable or necessary absences of less than 1 hour in nonroutine or emergency situations or when it is in the interest of GSA to excuse the employees.

(2) When the supervisor does not consider excuse of the absence justifiable, but also determines that an AWOL charge is not warranted, the employee may request to work an equivalent amount of extra time on the same day; or may request that the absence be charged to any compensatory time the employee has to his or her credit, to available annual or sick leave, as appropriate, or, with the employee's consent, to LWOP.

(3) If in the supervisor's judgment neither (1) nor (2), above, are justified in a particular case, he or she may charge the absence to AWOL.

b. Absence for 1 hour or more. Absences of 1 hour or longer, including tardiness, may not be excused without charge to leave or loss of pay. The employee may elect to make up such an absence by working an equivalent amount of extra time on the same day. If this is not feasible or is considered an unsuitable treatment of the absence, the supervisor, at the employee's request, may either charge it as an approved absence against compensatory time, annual leave, sick leave, or LWOP. If the absence is unauthorized or unexcused, it may be charged to AWOL. Please refer to subpar. 10, above, for guidance if an absence is envisioned which would be charged to unrequested leave.

c. Cumulative charges. There is no authority to combine two or more tardinesses or other brief absences for the purpose of charging appropriate leave or AWOL on a cumulative basis, or for the purpose of determining how to treat absences of a similar nature in the future. No supplementary leave records shall be maintained for this purpose.

d. Charging of brief absences. (Also see subpar. 8b.)

(1) For an absence that is not excused but is treated as an approved absence (i.e., compensatory time off, annual leave, sick leave, or LWOP), the minimum amount chargeable is 1/10th of an hour and additional charges must be made in multiples of 1/10th. An employee whose absence is being charged to one or more of these approved absence categories cannot be required to perform work for any portion of the time charged. For example, an employee who is charged with 1 and 9/10th hours of approved absence for an actual period of absence of 1 hour and 50 minutes cannot be required to work for any portion of the remaining 4 minutes of the additional 1/10th hour charged.

(2) For an unapproved or unexcused absence that is treated as AWOL, the minimum time chargeable is also 1/10th of an hour, and additional charges must be in multiples of 1/10th. For example, an employee who is absent for 20 minutes can be charged 3/10th hours AWOL, an employee who is absent for 1 hour and 10 minutes can be charged 1 and 1/10th hours AWOL. An employee who is absent for 5 minutes cannot be charged AWOL.

(3) In no instance may a single absence that has not been approved in advance be charged in part to AWOL and in part to one or more of the approved absence categories. However, where the actual length of the absence is such that it is not wholly chargeable as an approved absence or as AWOL because of the restriction of the amount chargeable (i.e., minimum or multiples of, as indicated above), part of the absence may be excused and part charged to an approved leave category or to AWOL. For example, an unauthorized absence of 35 minutes may be charged as 5/10ths of an hour AWOL and the remaining 5 minutes excused. In the case of an approved absence of 1 hour and 25 minutes, 1 and 4/10ths hours may be charged to annual leave and 1 minute excused.

(4) No absence nor any portion of any absence may be charged as annual leave until any compensatory time that the employee has to his/her credit is exhausted.

e. Disciplinary action. Situations involving disciplinary action and brief absences are often of a sensitive nature and should be handled individually in consultation with an employee relations and/or labor relations specialist in the servicing personnel office. These situations may require reference to a complex body of case decisions. For information on adverse actions implications, refer to agency directives that prescribe adverse action policy and procedures, to delegations of authority, and to negotiated agreements. Specifically, refer to GSA Administrative Manual, ch. 3, pt. 8.

18. Audit. The Inspector General (IG) is responsible for periodic audits of time and attendance and overtime records to ensure adherence to laws and regulations.

The following paragraph 1-19 of the Time and Leave Administration (T&L) HB, OAD P 6010.4, Chapter 1, is added to implement Travel Comp Time entitlements in GSA. Any necessary minor conforming changes to other chapters and paragraphs of the T&L HB will be made when scheduled revisions are made to the affected chapters and paragraphs:

Time and Leave  
Administration HB (T&L  
HB),  
OAD P 6010.4

## Chapter 1-19

OAD P 6010.4

19. Compensatory Time Off for Travel (travel comp time). Covered employees who spend time on officially authorized travel outside their official duty station are entitled to travel comp time off on a hour-for-hour basis for creditable time in travel status based on the criteria below, if the travel time is not otherwise compensable. Travel comp time is not premium pay and may not be converted to pay under any circumstances. It does not count toward the biweekly or annual limits on regular and premium pay or the aggregate limit on total pay. This policy is supplementary to and may not conflict with regulations at 5 CFR part 550, subpart N.

5 CFR 550.1401

(a) Coverage. This policy covers employees as defined in 5 U.S.C. 5541(2) who are employed in GSA, whether or not subject to the overtime provisions of the Fair Labor Standards Act (FLSA). Coverage under this entitlement includes employees in senior-level (pay plan - SL) and scientific or professional (pay plan - ST) positions, but not members of the Senior Executive Service (pay plan - ES) or prevailing rate employees (pay plan - WG, WL, WS, etc.).

5 USC 5541(2)

5 CFR 550.1402

5 CFR 550.1403

(b) Creditable travel time. Creditable travel time for travel comp time purposes is defined here and at 5 CFR 550.1404. The following policy supplements criteria in regulation which defines travel time as actual time spent traveling between official duty station and temporary duty station or between two temporary duty stations, exclusive of time spent at a temporary duty station:

5 CFR 550.1404

1) Officially authorized travel. In the context of this paragraph (except in emergencies), "travel" means travel on official business between the official duty station (as defined for travel comp time purposes), below) and a temporary duty station, or between two temporary duty stations, in accordance with a travel authorization approved in advance by an official authorized to do so under GSA Travel Policy, PFM P 4290.1, and local directives.

5 CFR 550.1403

GSA Travel Policy:

PFM P 4290.1

2) Exclusion of compensable travel time. If possible, travel should be scheduled during regularly scheduled hours. In all cases, travel time for travel comp time purposes excludes travel time within regular working hours, as defined by the employee's regularly scheduled administrative workweek and compensated by regular pay. It also excludes any travel time resulting in entitlement to overtime pay, other premium pay, or regular comp time (as a substitute for irregular or occasional overtime pay).

5 CFR 550.1403

5 CFR 550.1404(a)(2)

5 CFR 550.112(g)

5 CFR 550.114

5 CFR 551.422

5 CFR 551.531

5 CFR 610.102 and

OPM HB on Alternative Work Schedules

3) Crediting usual waiting time at terminals. Within GSA's "sole and exclusive discretion":

i. "Usual waiting time" at terminals before scheduled departure is limited to 2 hours of travel time on domestic routes or 3 hours of travel time on international routes. Additional travel time for travel comp time purposes may be approved if, based on acceptable evidence as determined by the employee's supervisor:

1. A representative of the airport, terminal or carrier prescribes an earlier arrival at the airport or terminal to assure sufficient processing time before departure; or

2. The initial departure is delayed and the period of delay is not "extended waiting time" such that the employee is not free to rest, sleep or otherwise use the time for his or her own purposes.

ii. "Usual waiting time" at terminals interrupting actual periods of travel is also travel time, unless it is excluded as "extended waiting time" when the employee is free to rest, sleep or otherwise use the time for his or her own purposes, as determined by the employee's supervisor or designee.

GSA Policy

OPM Memo CPM 2005-03:

Q&amp;A #6

Examples #2 &amp; #3

GSA Policy

5 CFR 550.1404(b)(1)

5 CFR 550.1404(b)(3)

GSA Policy

4) Alternatives to actual travel time based on official travel orders.

i. When an employee requests and is permitted to use an alternate mode of transportation, time of travel, or travel route, differing from that reflected by the official travel orders, travel time that would have resulted under travel orders must be estimated and the lesser of either estimated or actual travel time must be credited. (5 CFR 550.1404)

5 CFR 550.1404(c)(2)

- ii. When an employee ordered on multiple-day travel chooses not to use temporary lodgings, but to return home at night or over a weekend for personal reasons, only travel time resulting from the ordered travel is credited for travel comp time, unless the official who approves the official travel determines that there is an overall savings due to reduced lodgings costs, including additional cost of travel comp time used. In determining whether there is a savings, the cost of lost labor time resulting from used travel comp time must be subtracted from any savings due to reduced lodgings cost. Travel comp time labor cost is determined by multiplying the travel comp time hours resulting in the lodging savings times the employee's adjusted rate of basic pay.
- 5 CFR 550.1404(c)(3)  
GSA Policy
- The "adjusted rate of basic pay" is the rate that appears in block 20c of the SF-50, Notification of Personnel Action, divided by 2087 to produce an hourly rate.
- 5) Normal commuting time exclusion. Travel time outside the official duty station is normally measured from "portal to portal," between home or worksite at the official duty station to the place of lodging or worksite at the temporary duty station or between two temporary duty stations. However, normal commuting time outside regular hours experienced by the employee while at the official duty station is subtracted from travel time for travel comp time purposes under the following conditions:
- i. Normal commuting time is subtracted from travel time when the employee travels directly from home to a temporary duty station, outside his or her official duty station or the reverse.
- 5 CFR 550.1404(c)(1)
- ii. Normal commuting time is subtracted when the employee travels directly from home to a terminal outside the official duty station, or the reverse.
- 5 CFR 550.1404(d)
- iii. Any travel from home to a terminal, or the reverse, within the limits of the official duty station is considered commuting time and is subtracted from travel time for travel comp time purposes.
- 5 CFR 550.1404(d)  
(OPM Q&A#11)
- i. Any travel from worksite to a terminal, or the reverse, is considered travel time for travel comp time purposes with no reduction for normal commuting time.
- 5 CFR  
550.1404(d)OPM  
Q&A #12
- ii. If the employee's official duty station (as reflected on his or her most recent notification of personnel action) is the employee's home, no commuting time is subtracted from travel time from home to a terminal outside the official duty station or the reverse.
- 5 CFR 550.1403,  
"Official Duty  
Station"  
5 CFR  
550.1404(d)
- 2) Meal period exclusion. Bona fide uninterrupted meal periods during actual travel time or waiting time are excluded from travel time for travel comp time credit.
- 5 CFR  
550.1404(b)(2)
- 3) Official duty station for travel comp time purposes. "Official duty station for GSA travel comp time purposes" is the same as that defined for the purpose of determining overtime pay under 5 CFR 550.112(j) and 5 CFR 551.422(d).
- 5 CFR 550.112(j)  
5 CFR
- i. Unless otherwise defined below, the official duty station for GSA travel comp time purposes is a geographic area within a radius of 50 miles surrounding the worksite within the official duty station of the employee's position of record as reflected on his or her most recent notification of personnel action (SF-50) or it is a larger applicable area if so defined as an "official station and post of duty" under GSA travel policy and 41 CFR 300-3.1.
- 551.422(d)  
5 CFR 550.1403,  
"Official Duty  
Station"  
GSA Policy

- ii. An official duty station for travel comp time purposes may be administratively defined by the Chief People Officer (or designee) for Central Office GSA positions with an official duty station (as reflected on the SF-50) within the Washington DC metropolitan area (as defined in GSA travel policy) to be a radius of not greater than 50 miles surrounding a worksite in compliance with 5 CFR 550.112(j), 5 CFR 551.422(d), provided that such a definition must be not less than an applicable definition of "official station and post of duty" under GSA travel policy and 41 CFR 300-3.1.
- GSA Travel  
Policy:  
PFM P 4290.1,  
Chapter 7;  
5 CFR  
550.112(j);  
5 CFR  
551.422(d);  
Federal Travel  
Regulations:  
41 CFR 300-3.1,  
(Glossary)  
GSA Policy
- iii. An official duty station for travel comp time purposes may be administratively defined by a GSA Regional Administrator (or designee) for positions with an official duty station (as reflected on the SF-50) in the region by a radius of not greater than 50 miles surrounding a worksite in compliance with 5 CFR 550.112(j), 5 CFR 551.422(d) provided that such a definition must be not less than an applicable definition of "official station and post of duty" under GSA travel policy and 41 CFR 300-3.1.
- GSA Travel  
Policy:  
PFM P 4290.1,  
Chapter 7  
GSA Policy  
5 CFR  
550.112(j);  
5 CFR  
551.422(d);  
Federal Travel  
Regulations:  
41 CFR 300-3.1,  
(Glossary)
- iv. Official duty stations that are administratively defined for GSA travel comp time purposes under 6ii and 6iii, above, must be announced to all GSA employees at the time they are established or changed and periodically thereafter.
- GSA Policy
- 4) Credit for travel comp time may be authorized in increments of 1/10th of an hour (6 minutes).
- GSA Policy
- 5) Although it may be used for the same purpose, travel comp time must be accounted for separately from and may not be used interchangeably with regular comp time (as a substitute for irregular or occasional overtime pay), religious comp time or credit hours (under a flexible schedule).
- 5 CFR  
550.1405(a)
- 6) For additional information on crediting travel comp time, please refer to OPM or GSA Travel Comp Time Guidance that is issued in association with this policy or otherwise available through GSA Servicing Human Resources Offices and the National Payroll Center.
- (b) Requesting travel comp time credit.
- 1) To receive travel comp time entitlement, each employee is responsible for documenting personal travel time and submitting a written request for travel comp time credit to his or her immediate supervisor or designee for approval before the end of the pay period following the pay period of the date of return to the official duty station from the travel resulting in the request (or 30 days after the effective date of this policy, if later).
- 5 CFR  
550.1405(a) and  
(b)  
GSA Policy
- 2) Local management (Regional Administrator or Head of Service or Staff Office or designee) may establish the format of a travel comp time request. In the absence of such a locally determined format, the model "Request for Travel Comp Time" (Figure 1-19 [Link](#)) must be used.
- GSA Policy
- 3) For crediting of travel comp time, requests must be complete and acceptable, in accordance with this policy and as determined by the supervisor, and:
- GSA Policy
- i. Identify for each date of travel:
- GSA Policy
1. Beginning times,
  2. Duration in hours and 10ths of hours,
  3. Excluded time, and
  4. Points of origin and destination (e.g., home, worksite, hotel, etc.)
- ii. Reflect travel that is officially approved under GSA travel policies by a GSA official authorized to do so or that is permitted as an alternative by the same official in accordance with regulations and GSA policy;
- GSA Policy

iii.	Conform with actual travel times and preferred mode of transportation as reflected by the official travel orders, or follow rules under "alternatives to official travel orders" above;	GSA Policy
iv.	Identify the employee's regularly scheduled administrative workweek (specific hours of the day and days of the week scheduled in advance of the administrative workweek).	GSA Policy
v.	For employees on flexible schedules, identify a pattern of arrival and departure times by averaging over the last pay period that may represent the employee's regularly scheduled administrative workweek	GSA Policy OPM HB on Alternative Work Schedules
vi.	Calculate and exclude travel time that is compensable under another entitlement (i.e., regular hours within the regularly scheduled administrative workweek and hours of overtime pay or regular comp time for travel entitlement);	5 CFR 1401 5 CFR 1403 "Compensable" 5 CFR 550.112(g), 5 CFR 550.114, 5 CFR 551.422, 5 CFR 551.531 GSA Policy
vii.	Reflect travel between official duty station and temporary duty station or between two temporary duty stations;	5 CFR 1404
viii.	Conform with the criteria for crediting travel time as defined in (b) above, for instance, excluding normal commuting times, uninterrupted meal periods, and periods in excess of usual waiting times; and	5 CFR 1404 GSA Policy
ix.	Dated and signed by the requesting employee.	GSA Policy
(c)	<u>Approval of travel comp time credit.</u> Upon receiving a request for approval of travel comp time credit from a supervised employee, a supervisor will, normally within 5 work days:	GSA Policy
1)	Review for completeness and agreement with official travel orders;	GSA Policy
2)	Assure compliance with criteria in the policy or in 5 CFR part 550, subpart N to determine total travel comp time credit;	GSA Policy
3)	Approve an amount of travel comp time based on the determination above in increments of 1/10th of an hour (6 minutes), or disapprove; and	GSA Policy
4)	Sign and date as approved and forward to the employee's timekeeper for ETAMS coding or, if disapproved, return to the employee as disapproved with reasons for disapproval in writing.	GSA Policy
(d)	<u>Crediting travel comp time.</u> Travel comp time is:	
1)	Available for use upon approval by the employee's supervisor or designee;	GSA Policy
2)	Credited by recording in ETAMS for the dates of travel any resulting travel comp time; and	GSA Policy
3)	Credited under ETAMS Code 16, "Travel Comp Time Earned," to the employee's account in an amount divisible by 6 minute increments, as approved, or in the greatest amount divisible by 6 minute increments that does not exceed the approved amount.	GSA Policy
(e)	<u>Supervisor.</u> For the purposes of travel comp time crediting and use, "supervisor" means the official (normally the first-level supervisor) who is delegated responsibility for certifying the employee's timekeeping record or his or her designee.	GSA Policy
(f)	<u>Requesting use of travel comp time.</u>	GSA Policy
1)	An employee may request travel comp time by the same method used to request annual leave, credit hours, or regular comp time.	
2)	The same advanced notice required for the use of annual leave is required for the use of travel comp time.	GSA Policy

- 3) Use of travel comp time may be requested by submitting a signed OPM Form 71, Request for Leave or Approved Absence," to the employee's supervisor, and:
- Specifying the times of day and dates of absence;
  - Checking off "Other paid absence;"
  - Entering the amount of travel comp time use in increments of 1/10th of an hour (6 minutes); and
  - Specifying "Travel Comp Time" in the remarks box; or
  - As otherwise required under any revision of OPM Form 71.
- 4) Alternative methods of requesting travel comp time must meet standards of documentation required for any approved absence. GSA Policy
- (g) Approval of travel comp time use. Except as described below, supervisors and employees have the same responsibilities in requesting approval of travel comp time use as they do in the request and approval of annual leave, in accordance with the following conditions: GSA Policy
- Although use of travel comp time is an entitlement of the employee, the time of its use is a matter of mutual agreement between the employee and supervisor, with the necessary interests of GSA taking precedence over the employee's personal interests as determined by the supervisor. GSA Policy
  - Supervisors should approve requests to use travel comp time in the following priority to cover absences from the scheduled tour of duty: GSA Policy
    - Before any annual leave, unless such use would result in forfeiture of annual leave above the 240-hour limit at the end of the leave year or forfeiture based on time limits for the use of restored annual leave;
    - Before any use of credit hours, unless such use would result in the forfeiture of credit hours at the end of a pay period, and
    - After any use of unused regular comp time, such that any unwanted costs resulting from conversion to overtime pay are minimized.
  - Under circumstances in which a supervisor has discretion, approved absences should not be permitted to cause additional approved overtime. Normally, on a day when an employee is approved to work overtime, or the day before or after that day, supervisors should not approve travel comp time for use by the employee. GSA Policy
  - In consideration of the constraints described above and within the time limits described below: GSA Policy
    - Employees have primary responsibility to schedule and request any travel comp time, annual leave, credit hours or regular comp time in a timely manner such that:
      - The work requirements are met;
      - The employee's supervisor has advance notice necessary to equitably balance all leave requests; and
      - Possible forfeiture of annual leave or travel comp time is avoided.
    - Supervisors have a primary responsibility to balance use of annual leave, credit hours, travel comp time, and regular comp time among supervised employees such that:
      - The interests of GSA have precedence over personal wishes of employees;
      - Work requirements, equitability among employees and considerate treatment of employees are considered in approving travel comp time use; and
      - Measures are taken to encourage scheduling absences to avoid possible forfeiture of annual leave or travel comp time.
    - Supervisors and employees have a mutual responsibility to coordinate the planning of absences such that, to the degree possible, primary GSA mission requirements are met and supervised employees may use their travel comp time entitlement as needed.
  - Charging travel comp time use: Earned travel comp time that has been requested and approved for use is charged in ETAMS under Code 43, "Travel Comp Time Used" in 6 minute (1/10 hour) increments, within the time limits described below. GSA Policy
  - Limits in regulation on using travel comp time: Travel comp time must be used before the end of the 26th pay period after the pay period during which it was credited, or it is forfeited, except under the following conditions: 5 CFR 550.1407
    - If an employee separates or is placed in a LWOP status to perform military service and subsequently returns to work in the same agency, or 5 CFR 550.1407(a)(2)(i)
    - If an employee separates or is placed in a LWOP status with entitlement to on-the-job injury compensation and subsequently returns to work. 5 CFR 550.1407(a)(2)(ii)



- 3) Under the above exceptions, the employee must use credited travel comp time by the end of the 26th pay period following the pay period in which the employee returns to duty, or it is forfeited. 5 CFR 550.1407(a)(2)
- (j) Disposition of unused travel comp time upon transfer or separation:
- 1) If an employee voluntarily transfers to another agency, unused travel comp time is forfeited 5 CFR 550.1407(b)
- 2) If an employee separates from federal service unused travel comp time is forfeited, except, in the case of military service or injury compensation described above, it will be held in abeyance 5 CFR 550.1407(c)
- 3) When an employee moves to a federal position not covered by 5 CFR part 550, subpart N, unused travel comp time is forfeited. 5 CFR 550.1407(d)

19. GSA policy on compensatory time off for travel.

The following GSA Human Resources policy is presented in a format designed to easily distinguish between:

1. Applicable law and government-wide regulation
2. GSA policy subject to directives management and labor relations review processes, and GSA guidance containing explanatory or advisory information, and examples or suggested actions.

Such as "5 CFR part 550, subpart N"

Online, see [www.archives.gov](http://www.archives.gov) and search under "Federal Register" or [www.firstgov.gov](http://www.firstgov.gov) and search under "laws and regulations" in the "Reference Center."

GSA policy and guidance is referenced, such as "GSA Travel Comp Time Guidance".

Online, see the Document Library on InSite.

### Compensatory Time Off For Travel (Travel Comp Time)

Interim Office of Personnel Management regulations establishing a new subpart N to 5 CFR part 550, effective January 28, 2005, entitle most GSA employees to a new compensatory time off for travel (travel comp time), that may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. It is an entitlement separate from and in addition to any overtime pay or regular compensatory time (regular comp time) entitlement for travel time outside regular working hours. This travel comp time policy, along with other policy governing GSA travel hours of duty and premium pay entitlements is distinct from government-wide Federal Travel Regulations (FTR) and GSA Internal Travel Regulations and Control of Official Travel (GSA Travel Policy)

Federal Register: 70 FR 3855, dated January 27, 2005 Title 5, Code of Federal Regulations, (5 CFR) part 550, subpart N FTR: 41 CFR Chapter 300, General, Part 300-3.1, Glossary GSA Travel Policy: PFM P 4290.1.

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CHAPTER 2. ANNUAL LEAVE

1. Purposes and use. Annual leave is provided and used for two general purposes:
- a. To allow every employee an annual vacation period of extended leave for rest and recreation; and
  - b. To provide periods of time off for personal and emergency purposes. These absences involve, but are not limited to, such matters as a death in the family (not covered by chap. 7), religious observances (other than those for which compensatory time is used), securing a driver's permit, or other personal business which can be disposed of only during the time in which the employee ordinarily would be working.
  - c. Annual leave is a benefit and accrues automatically. While employees have a right to take accrued and accumulated annual leave, supervisors have the responsibility to fix the time when it may be taken.
2. Responsibilities.
- a. Supervisors.
    - (1) Supervisors have the primary responsibility for determining when and to what extent annual leave is to be granted. Work requirements as well as equitable and considerate treatment of all employees are the determining factors in approving leave.

(2) Scheduling the time and amount of leave to be granted is normally accomplished by mutual agreement between the employee and his or her supervisor. However, the interests of GSA must take precedence over the employee's personal wishes if the request for leave conflicts with work requirements.

(3) All employees should be given an opportunity to take annual leave which would otherwise be forfeited.

(4) Supervisors should maintain a reasonably flexible policy with respect to emergency annual leave, considering each request in relation to workload requirements and available work force at the time.

b. Employees.

(1) Employees have the responsibility to cooperate with their supervisor in scheduling vacations and requesting leave when their services can best be spared.

(2) Employees who accumulate annual leave in excess of the maximum carryover to avoid the possibility of reducing their balance at the end of the leave year (see par. 10) must realize they do so at their own risk.

(3) When an employee receives the opportunity to schedule and use annual leave but fails to do so, any loss of leave is considered to be by the employee's choice, not the supervisor's. In this case the employee is not entitled to have the forfeited leave restored. Conditions for restoring annual leave are given in par. 12.

3. Applying for and approving annual leave.

a. Except in emergencies annual leave must be approved before the leave begins.

b. When it is necessary to take emergency annual leave (leave not approved in advance) employees are required to notify their supervisor as soon as possible. Except in unusual circumstances, this must be done no later than 2 hours after the start of the employee's workday. Employees such as Federal Protective Officers, operating engineers, and those whose positions require continuous attendance, must notify their supervisor at least 1 hour in advance of their regular tour of duty to allow time to arrange for a substitute.

c. Absences on annual leave are normally recorded by having the employee initial GSA Form 856-B, Time and Attendance Record or by having the employee submit an SF-71, Application for Leave. An SF-71 must be submitted when an employee will not be present to initial the timecard.

4. Earning rates for annual leave. Employees earn annual leave based on their total years of creditable service. The amount of leave earned by permanent and temporary employees is the same.

a. Full-time employees. These employees earn leave as follows:

Amount of annual leave earned

<u>Years of service</u>	<u>For each full</u>	
	<u>biweekly pay period</u>	<u>Per year</u>
Less than 3	4 hours	104 hours (13 days)
3 to 15	6 hours*	160 hours (20 days)
15 or more	8 hours	208 hours (26 days)

\*Accrual for last full biweekly pay period in calendar year is 10 hours.

b. Part-time employees. Part-time employees who have regular tours of duty established on one or more days during each administrative workweek earn leave as follows:

<u>Years of service</u>	<u>Amount of annual leave earned</u>
Less than 3	1 hour for each 20 hours
3 to 15	1 hour for each 13 hours
15 or more	1 hour for each 10 hours

c. Intermittent employees. These employees have no established tour of duty and are excluded from leave benefits.

d. Employees working 24-hour shifts or other uncommon tours of duty who are authorized premium pay on an annual basis for standby duty. (See ch. 14-3.i)

(1) Premium pay on an annual basis is paid to certain employees in positions requiring them to regularly remain at or within the confines of their duty station during longer than ordinary periods of duty, a substantial part of which consists of remaining in standby status rather than performing work. The additional annual compensation takes the place of any other premium pay for regularly scheduled overtime, night, holiday, and Sunday work. Employees in this group earn annual leave as follows:

<u>Work period</u>	<u>Years of Service</u>	<u>Pay Periods</u>	<u>Last Pay Period</u>
60 hours	less than 3	6 hours	6 hours
	3 to 15	9 hours	15 hours
	15 or more	12 hours	12 hours

72 hours	less than 3	7 hours	13 hours
	3 to 15	11 hours	13 hours
	15 or more	14 hours	24 hours
85 hours*	less than 3	8 hours	21 hours
	3 to 15	13 hours	15 hours
	15 or more	17 hours	17 hours

\* Average workweek for tour of 72 hours on and 72 hours off

(2) The above accrual rates apply only to employees for whom additional compensation on an annual basis for standby duty has been authorized. They do not apply to other groups of employees even though they may be working 24-hour shifts with a 60- or 72-hour workweek. Such employees accrue annual leave at the rates set forth in a, above.

(3) Leave will be charged in proportion to the rate at which it is earned. For example, while an employee working a 40-hour workweek would be charged 40 hours for a week's absence, an employee working a 60-hour workweek would be charged 60 hours and an employee working a 72-hour workweek would be charged 72 hours. All of the days worked by these employees are considered regular workdays including holidays falling within their regularly scheduled administrative workweek (See chapter 13). Therefore, when these employees are absent on a holiday they are considered to be absent on a regular workday and leave is charged for the absence.

(4) When additional compensation on an annual basis is first authorized for an employee, or when there is a subsequent change in the hours of his/her workweek while they are still subject to this additional compensation, the number of hours in the employee's leave balance are converted in accordance with the following formulas:

Where Change is From a Workweek of	The Number of Hours in Leave Balance Will Be
40 hours to 60 hours	Multiplied by 60 and divided by 40
40 hours to 72 hours	Multiplied by 72 and divided by 40
40 hours to 85 hours	Multiplied by 85 and divided by 40
60 hours to 72 hours	Multiplied by 72 and divided by 60
60 hours to 85 hours	Multiplied by 85 and divided by 60
72 hours to 60 hours	Multiplied by 60 and divided by 72
72 hours to 85 hours	Multiplied by 85 and divided by 72

(5) When an employee receiving premium pay on an annual basis for standby duty is no longer subject to this provision (even though he/she may continue to work a 60 - or 72 hour tour of duty) hours in his/her leave balance are converted using the following formulas:

When the workweek is changed from	The number of hours in leave balance is
60 hours	Multiplied by 40 and divided by 60
72 hours	Multiplied by 40 and divided by 72
85 hours	Multiplied by 40 and divided by 85

(6) In converting the leave balance fractions of one-half or more are rounded to whole hours. Fractions of less than one-half are dropped.

##### 5. Change in accrual rate.

- Changes in accrual rates take effect at the beginning of the pay period following the pay period in which the employee completes his/her third or fifteenth year of service.
- The changes are carried out through the Payroll Information Processing System (PIPS). New accrual rates are shown on GSA Form 975, Employee's Statement of Earnings, Deductions, and Leave.

##### 6. Granting of annual leave.

a. Unless restricted because of a limited appointment as specified in subpar. b., below, employees earn annual leave beginning with their appointment. Annual leave may be granted as of the first day of employment to employees whose appointments are for 90 calendar days or longer. Supervisors may also grant advanced annual leave to employees during this period. However, not more than the number of hours in the employee's biweekly tour of duty may be advanced.

b. If an appointment is for less than 90 calendar days, the employee is not entitled to annual leave until employed continuously for 90 days under successive appointments without a break in service, provided one of the appointments is for 90 calendar days or longer.

(1) The current appointment under which an employee is serving determines eligibility for annual leave.

(a) An employee first appointed for less than 90 calendar days but whose appointment is extended before the expiration date, is considered to be serving under a new appointment. If the second appointment is for 90 days or longer, the employee is entitled to earn annual leave beginning with the effective date of the extension.

(b) When the employee in this example has served a total of 90 days from the date of the initial appointment, he/she is entitled to retroactive credit for the leave that would be earned during the period from the date of initial appointment to the date of the extension of the appointment.

(2) The requirements relating to using and advancing leave continue to apply; e.g., must be employed for a full biweekly pay period to earn leave for the pay period.

7. Restrictions on using leave.a. Terminal leave.

(1) Employees are entitled to a lump-sum payment for accumulated and accrued annual leave when they are separated from the service. The lump-sum payment does not include added credit for annual leave that would have been earned or holidays occurring during the period represented by the lump-sum payment. Allowing an employee to take terminal leave instead of a lump-sum payment means the employee would continue to earn annual leave and would be paid for holidays occurring during the period the leave is projected to cover. Therefore, administrative authority to grant an employee terminal annual leave immediately before separation, if the employee's separation is known in advance, is limited to cases where the exigencies of the public service require it. Examples follow:

(a) When a law, or a regulation that has the force of law, requires advance notice of separation of a specific length of time (such as in a RIF), annual leave may be granted during the period of advance notice of separation when it is impractical to keep the employee on active duty during the period (25 Comp. Gen. 82);

(b) When the needs and interests of the Government require it. For example, if an employee is to be separated and cannot be kept on duty until the date of separation he or she must be placed in a non-duty status. In this case it is in the Government's interest to allow the employee to use terminal annual leave rather than place the employee on administrative leave (38 Comp. Gen. 203);

(c) When an employee is granted annual leave and it is not known that he/she plans to resign during or after the leave period without returning to duty, the separation date may be fixed administratively to coincide with the termination date of the pay period during which the notice of resignation is received by the supervisor, and a lump-sum payment made for any leave extending beyond that date (24 Comp. Gen. 659).

b. Use of annual leave during lapse in appropriations.

(1) Generally, employees whose annual leave is scheduled to begin before or after the lapse may be permitted to use the leave. However, if an employee is essential for shutdown operations due to lack of funds or to perform other essential functions, the employee's supervisor may cancel approved leave and require the employee to report for duty.

(2) It is within the authority of the Administrator to cancel approved annual leave for employees who are not essential and place them on furlough. Unless the Administrator uses his or her discretion to cancel all annual leaves upon lapse of appropriations and places affected employees on furlough, it is GSA's policy to allow the employees to complete the scheduled annual leave.

(3) Only annual leave that is accrued or accumulated may be used as scheduled during a lapse of appropriations. An employee granted advance annual leave under par. 8, below, must have the leave canceled while the lapse persists. Essential employees on advanced annual leave must either be returned to duty or put on furlough. Under no circumstances may an employee use advanced annual leave during a lapse of appropriations.

(4) Annual leave that was not approved before the lapse, may not be granted during the lapse, nor may it be granted retroactively unless authorized by law. Employees kept in duty status during a lapse of appropriations may not take annual leave.

8. Advance of annual leave.

a. Employees are entitled to use accrued and accumulated annual leave subject to management approval.

b. When warranted by the circumstances, and under the following restrictions, supervisors may grant advanced annual leave upon request of an employee.

(1) The employee must be able to repay the advanced leave (out of future earned leave) within a reasonable period of time and in all cases prior to the end of the leave year.

(2) At the time of approval it is anticipated that the employee will remain with GSA until the advance is repaid.

(3) Advanced annual leave may be granted only up to the number of hours in the employee's biweekly tour of duty. Thus, full-time employees may be granted up to 80 hours of annual leave and part-time employees may be granted up to the number of hours in the normal biweekly tour of duty beyond what has been accrued to date. Unlike earned leave an employee does not have a right to advanced leave. Whether to approve such advances and the amount to be granted is completely subject to management discretion.

(4) Exceptions to subpar. (3), above, may be approved by Heads of Services and Staff Offices and Regional Administrators or their designees to accommodate emergencies, work exigencies, scheduling conflicts or other exceptional circumstances.

c. In addition to the limitation in b.(3) above, full-time and part-time employees whose appointments are limited to 1 year or less shall not be granted leave in excess of the amount they will accrue through the end of the pay period in which such leave is granted.

d. A grant of advanced leave shall not be approved if it is known or if there is reason to believe that the employee does not intend to return to duty.

e. Employees on advanced annual leave at the time of a lapse in appropriations, will have such leave immediately canceled and be placed in a furlough status, or be required to report to duty, as appropriate. Under no circumstances may an employee be permitted to use advanced annual leave during a lapse in appropriations.

9. Substituting leave.

a. When approved by the supervisor, an employee is entitled to use accrued or accumulated annual leave to his/her credit to cover absences from duty for any reason. With administrative approval, he or she has the right to have any absence because of illness charged to accrued annual leave. Generally, approved absence otherwise chargeable to sick leave may be charged to annual leave. If the employee initially requests that the absence be charged to sick leave it may be changed to annual leave, if requested by the employee and approved by the supervisor before GSA Form 856-B, Time and Attendance Record, is sent to the National Payroll Center. (See ch. 3, Sick Leave.)

b. While annual leave may be substituted for sick leave previously granted as provided in a., above, or vice versa, a substitution only to avoid forfeiting annual leave at the end of the year may not be approved. The Comptroller General has held that when an employee accepts compensation based on approved annual leave with a consequent charge against accrued annual leave, the employee has made a decision that cannot be changed unless provided for by law or regulation. (Comp. Gen. B-181087, June 21, 1974)

10. Maximum accumulation.

a. Employees stationed in the United States.

(1) For full-time and part-time employees stationed in the 50 States and the District of Columbia, the maximum annual leave that may be accumulated and carried forward from 1 leave year to the next is 30 days, unless the employee had a greater amount of annual leave at the beginning of the current leave year as provided in c., below. Under certain conditions, employees may accumulate additional leave in a separate account as described in par. 12.

(2) Leave in excess of this 30-day limitation or in excess of the amount carried forward at the beginning of the leave year, if greater, will be forfeited at the beginning of the first complete biweekly pay period in any year in accordance with par. 11 below. The only exception is for leave which may be restored in accordance with the provisions of par. 12.

b. Employees stationed outside the United States. Full-time and part-time overseas employees may accumulate a maximum of 4 days of annual leave for use in succeeding years.c. Accumulation in excess of maximum.

(1) When the 30- and 45-day maximum limitations were placed in effect, many employees had accumulated annual leave balances in excess of these amounts. A special provision was made to permit these employees to retain the leave which they had already accumulated. This amount is carried forward as the employee's individual annual leave ceiling.

(2) When an employee who is in a position in which he is permitted a 45-day accumulation has an accumulation of 31 to 45 days and moves to a position in which he would be subject to the 30-day limit, he retains his accumulation ceiling above the 30-day maximum.

(3) In either of the cases described in (1) and (2), above, when the employee uses more annual leave in a leave year than he/she earns, the balance carried forward becomes his/her new annual leave ceiling if it is still above the maximum limits normally permitted for the position.

d. Senior Executive Service (SES) employees.

(1) There is no limitation on the accrual of annual leave by members of the SES while serving in the SES. However, only that portion of the leave that is attributable to service in the SES is not subject to the limitations on accumulation of annual leave specified in (c) above.

(2) When an SES employee moves to a non-SES position, any leave accumulated while in the SES, and which is in excess of the maximum amount allowed under c. above, shall remain to the employee's credit and be subject to reduction under the procedure outlined in c.(2) and (3) above.

11. Forfeiture of annual leave.

a. Any annual leave in excess of an employee's maximum permissible carryover is automatically forfeited at the end of the leave year unless restored as specified in b, below.

b. The normal rule requiring automatic forfeiture of excess annual leave may be temporarily suspended under the following conditions:

(1) Administrative error. If an administrative error caused the loss of annual leave otherwise accruable after June 30, 1960, it may be restored.

(a) An administrative error consists of failure to carry out written administrative policy of a nondiscretionary nature or to comply with administrative regulations having a mandatory effect.

(b) All leave earned after June 30, 1960, but lost through error, may be restored under par. 12. below, to provide proper leave credit in excess of the maximum accumulation without the normal forfeiture required under this paragraph.

(2) Exigencies of the public business. Employees who are prevented by exigencies of the public business from using annual leave that was scheduled and approved in advance may have their forfeited leave restored.

(a) To be considered for restoration the following two requirements must be met. If either is not met, then the forfeited annual leave cannot be restored.

(i) The use of annual leave must have been approved in writing before the start of the third biweekly pay period before the end of the leave year even though it may have been scheduled for use during the last three pay periods of the leave year; and

(ii) There must be a letter, memorandum or other written document stating that an exigency exists in an organization or organizations that the employee's supervisor used as the basis for canceling approved annual leave.

(iii) Sickness. If a period of sickness or injury or any other medical condition for which paid sick leave would be approved, prevents an employee from using annual leave that was scheduled and approved in advance, the leave may be restored.

(b) Employees have had the choice of substituting annual leave for sick leave (or nonpay status relating to illness). They may also have annual leave that was forfeited because of illness, supported by a physician's statement of incapacitation, restored for later use provided:

(i) That the annual leave was approved in advance; and

(ii) That the period of absence due to the sickness occurred so late in the leave year, or was of such duration that the annual leave could not be rescheduled for use before the end of the leave year to avoid forfeiting it.

(c) Sickness, i.e., a medical or physical condition for which a grant of sick leave would be approved, is not in itself a basis for permitting annual leave to be forfeited and later restored for use. Supervisors have the responsibility to schedule or reschedule the use of annual leave to avoid forfeiture even though an absence due to sickness occurs late in the leave year. This is especially true where it is known in advance that a medical or physical condition will require an absence before the end of the leave year.

(d) Absences due to illness may generate problems for the organization because of the type of work performed by the employee or because of the overall workload. Workload which is affected by an employee's absence due to illness may not be used as the basis for canceling scheduled annual leave, or for not rescheduling the use of annual leave to avoid forfeiture, unless the requirements relating to exigencies of the public business, as specified in (2), above, are satisfied.

c. It should be noted that planning leave informally or scheduling leave orally is not sufficient if an employee is to claim restoration of forfeited leave. Both the employee's request and the authorizing official's approval of leave must be in writing with dates and signatures. SF-71, Application for Leave, should be used.

## 12. Restoring annual leave.

a. Restored annual leave must be credited to a separate leave account. The amount of restored leave does not increase or otherwise change an employee's maximum permissible carryover of annual leave into a new leave year. The normal leave ceiling remains in effect for all employees.

b. Restored annual leave must be used no later than the end of the leave year ending 2 years after one of the following dates (except as provided in d., below):

- (1) The date the annual leave was restored in correcting an administrative error; or
- (2) The date fixed by management as ending the exigency that resulted in the forfeiting of the annual leave; or
- (3) The date the employee is considered recovered and able to return to duty, if the leave was forfeited because of sickness.

c. Any restored annual leave unused when the 2-year limit expires is again forfeited with no further right to restoration.

d. When there is an extended exigency of the public business, the 2-year limit on using restored annual leave does not apply. An "extended exigency" must meet all of the following conditions. It must:

- (1) Threaten the national security, safety, or welfare;
- (2) Last more than 3 calendar years;
- (3) Affect a segment of an agency or occupational class; and
- (4) Prevent later use of both restored and accrued annual leave within the time limit specified in b. above.

(5) The Head of a Service or Staff Office or Regional Administrator must request the Administrator or his or her designee to approve a declaration of an extended exigency. The request must give specific information about the nature of the exigency, how it threatens the national security, safety, or welfare, how long it is expected to last, what organizations, occupational groups, and positions are affected and what steps management has taken to minimize the adverse effects on employees. It must also state that there are no other employees available to accomplish the mission.

e. Employees eligible for restoration of annual leave should take the following actions:

### (1) Administrative error.

(a) If accrued annual leave was lost through administrative error, employees must submit a written request for restoration of the leave. The request should be forwarded to the National Payroll Center and must be accompanied by documentary evidence of the accrual and loss of the annual leave at the time the error was found. If official records are not available to substantiate the amount of annual leave to be restored, an estimate of the employee's leave account is acceptable when accompanied by official statements clearly reflecting the factors which form the basis for the estimate.

(b) A claim for payment may be filed with GSA by a former employee, or someone acting on his or her behalf, if GSA was the last agency of employment. For purposes of honoring the claim, GSA, as the last agency employer, acts as the Government's agent even though the administrative error and forfeiture of leave may have occurred while the former employee was employed by another agency. If official records are not available to substantiate the amount of annual leave for which payment is claimed, an estimate of the amount of leave that was forfeited and for which payment is being requested is acceptable when accompanied by official statements clearly reflecting the factors which form the basis for the estimate.

(c) These claims should be submitted to the Central Office or regional personnel officer for transmittal to the National Payroll Center.

(d) Any lump-sum payment due is computed on the basis of the former employee's salary rate in effect on the date that the lump-sum payment provisions of 5 U.S.C. 5551 last became applicable to him or her.

(e) In the case of a former employee:

i. The claim for payment must be filed by the former employee or someone acting on his or her behalf within 3 years following the date of discovery of the error.

ii. If the error is discovered by GSA, the former employee must be notified of his/her entitlement to payment and be instructed on how to file the claim. Sending a notice to a former employee's last known address, or when it is known that he/she has died, to any survivor's last known address, is adequate notification to satisfy GSA's obligation.

### (2) Exigencies of the public business.

(a) Supervisors should be guided by the following considerations in reaching a decision that specific kinds of operational requirements are of such magnitude or significance that employees cannot be excused from duty to avoid the forfeiture of annual leave.

i. The determination that the exigency is of such importance that employees cannot be excused from duty for a specified period of time is a required decision. Normally, this decision must be made in advance of the cancellation of scheduled leave. Only a bona fide emergency would preclude making the decision in advance.

ii. There is no reasonable alternative to the cancellation of the scheduled leave, or the assignment of those individual employees who will forfeit annual leave due to the exigency. This is a required separate decision distinct from the decision about the importance of the exigency.

iii. A specific beginning and ending date of the exigency period must be fixed in advance unless the suddenness or uncertainty of the circumstances prevents

advance decision. These dates establish the specific time period within which employees were prevented from using scheduled leave and thus subsequently forfeited leave.

(b) Since the decisions in (a) i and ii, above, must be approved by the Head of the Central Office Service or Staff Office or the Regional Administrator or their designees, the supervisor shall forward a request for approval of the following determinations to the appropriate official:

- i. The operational requirement is of such magnitude or significance that the employee cannot be excused from duty for the period of the exigency; and
- ii. There is no reasonable alternative to the cancellation of the scheduled leave or the assignment of employees who will forfeit annual leave because of the exigency.

(c) Documentation accompanying the request for approval must include:

- i. The calendar date the leave was approved by the official having authority to approve leave:
- ii. The date(s) during which the leave was scheduled for use and the amount of leave (days/hours) that was scheduled;
- iii. The facts and circumstances that precluded the use of annual leave at the time it was scheduled and why it could not be rescheduled. The beginning and ending dates for the exigency must be included;
- iv. The calendar date on which use of the canceled leave was reapproved by the official having authority to approve leave, provided that the leave had been scheduled for use earlier in the year and had to be canceled and rescheduled; and
- v. The date(s) during which the leave was rescheduled for use and the amount of leave (days/hours) that was rescheduled.

(d) The scheduling and, as necessary, rescheduling of the annual leave must be in writing. SF-71 may be used as documentary evidence to accompany the documentation in (c), above.

(e) If the determinations are approved by the Head of the Central Office Service or Staff Office or the Regional Administrator, or their designees, the original of all documents shall be forwarded to the National Payroll Center through the appropriate Central Office Personnel Officer for Central Office employees and through the appropriate Regional Personnel Officer in the case of regional employees. One copy shall be filed in the employee's official personnel folder and one copy given to the employee.

(f) The documents specified in (b) thru (d), above, must be retained until:

- i. The restored leave has been used or the time limit specified in par. 13.b. has expired; or
- ii. Until the final processing of the necessary financial documents if the restored leave is included in a lump-sum payment in the case of separation.

### (3) Sickness.

(a) Forfeited leave may be restored in instances in which the employee had annual leave scheduled but was unable to use it because of absence due to illness which occurred so late in the leave year that the annual leave could not be rescheduled.

- i. The employee's supervisor must submit a written request to restore the leave to the National Payroll Center through the Central Office Head of Service or Staff Office for Central Office employees and through the Regional Administrator concerned in the case of regional employees.
- ii. The request must be accompanied by a medical certificate and the documents specified in (2)(c) and (d), above.

(b) If there was time left in the leave year for the employee to have rescheduled the annual leave but an exigency of the public business prevented using it, the employee's supervisor must submit a written request for restoring the leave as specified in (a)(1), above. In this case, the letter must be accompanied by a medical certificate and the documents specified in (2) (b) thru (d) , above.

f. Both supervisors and employees are obligated to plan and schedule the restored leave for use as soon as circumstances permit and in no case longer than the specified 2-year limit.

(1) The scheduling of the restored annual leave must be in writing. SF-71 may be used for this purpose.

(2) Time and attendance clerks must keep a copy of the schedule on the back of GSA Form 873, Annual Attendance Record, and send a copy of the schedule to the payroll center.

### 13. Transferring annual leave. Leave is transferred as follows:

a. Between positions under chapter 63, title 5, United States Code. The annual leave account of an employee who moves from a position under the annual and sick leave statutes (codified as ch. 63 of title 5, U.S.C.), to another position under these statutes without a break in service of one or more workdays, is credited with the annual leave that was due him or her in the previous position or agency or charged with any unsatisfied advances. Hours remaining in a restored leave account are also transferred but reported separately from annual leave hours.

b. Between different leave systems. When an employee transfers between different leave systems without a break in service of one or more workdays, his/her annual and restored leave accounts are certified to the agency to which he or she is transferring. Leave credits between different leave systems are adjusted as follows:

(1) A formula of 7 calendar days for 5 workdays is applied whenever leave is transferred or recredited between one system which charges for leave on a calendar day basis to another system which charges for leave on a workday basis. For example, where leave is charged on a calendar day basis, an employee would be charged 4 days leave if absent from Friday through Monday, rather than the 2 days which would be charged on a workday basis. No adjustment is required if both systems charge for leave on the same basis.

(2) When a person is appointed in GSA and his/her previous position was under a different leave system which charged for leave on a calendar day basis, the number of hours to



his/her credit under the different leave system shall be multiplied by 5 and divided by 7. All fractions of four-sevenths or more shall be converted to a whole hour. All fractions of less than four sevenths shall be dropped. For example, an employee with 200 hours of annual leave and 160 hours of sick leave to his/her credit under a system which charges for leave on a calendar day basis would be credited in GSA with 143 hours of annual leave and 114 hours of sick leave.

(3) When a GSA employee goes to another agency where his/her position is under a different leave system which charges for leave on a calendar day basis, his new agency would multiply and number of hours in his GSA leave account by 7 and divide the result by 5 to get his/her adjusted total.

c. Partial transfer of leave. When an employee transfers without a break in service of one or more workdays to a position under a different leave system to which he/she can transfer only a part of his or her annual leave, the untransferred leave is held in abeyance until he/she returns without a break in service of more than 52 calendar weeks to the leave system under which it was earned. At that time, the untransferred leave is recredited to his/her account. Restored leave may not be held in abeyance or recredited, but must be used or paid for in a lump-sum payment.

d. To a position not under the leave system.

(1) When an employee transfers without a break in service of one or more workdays to a position to which leave cannot be transferred because the position is not under an annual leave system, the untransferred leave is held in abeyance until he/she returns without a break in service of more than 52 calendar weeks to the leave system under which it was earned. At that time, the leave is recredited to the employee's account. Or, as provided in (2)(b), below, the employee may received a lump-sum payment for this leave.

(2) In the following situations, the employee may be paid for the leave in a lump sum:

- (a) Employees who enter the Armed Forces or who transfer to public international organizations and who do not elect to retain the annual leave to their credit;
- (b) Employees who transfer to positions not under a leave system to which annual leave may be transferred; and
- (c) Employees who move to positions as:
  - i. Intermittent employees without an established regular tour of duty during each administrative workweek;
  - ii. Temporary employees engaged in construction work at hourly rates;
  - iii. Officers or employees of the U.S. Senate or the House of Representatives; or
  - iv. Employees of any corporation under the supervision of the Farm Credit Administration if any member of the corporation's board of directors is elected or appointed by private interests.

(3) Any restored leave remaining in the employee's account must be paid for in a lump-sum payment.

#### 14. Lump-sum payment for accumulated and accrued annual leave.

a. A lump-sum payment for accumulated and earned annual leave must be made when:

- (1) An employee dies;
- (2) An employee retires;
- (3) An employee is separated from the Federal service for one or more workdays, except under circumstances which make payment of salary to the individual illegal;
- (4) An employee elects to receive lump-sum payment upon entrance into the military service or at any time prior to reemployment; or
- (5) An employee changes to one of the following positions:
  - (a) A part-time position, except positions paid on an hourly basis in the field service of the U.S. Postal Service;
  - (b) A temporary position involving construction work paid for at hourly rates; or
  - (c) To the U.S. Senate or House of Representatives as an officer or employee (see subpar. 14.d.(2)).

b. The lump-sum payment shall include payment for the following:

- (1) The regular carryover balance from the previous leave year, if any;
- (2) Earned but unused annual leave during the current leave year, if any; and
- (3) Any unused restored annual leave maintained in a separate account as specified in subpar. 16.a.

#### 15. Payment for or recredit of restored leave.

a. Any restored annual leave maintained in a separate account and unused at the time of separation, provided the separation occurs prior to the expiration of the 2-year limit, is included in the employee's lump-sum payment. No payment is authorized for unused restored leave after the expiration of the 2-year time limit.

b. Restored annual leave included in a lump-sum payment is not subject to refund of the payment and may not be recredited if the employee is reemployed prior to the expiration of the

lumpsum period. Regular annual leave, however, is subject to refund and recredit on reemployment. (See par. 16.)

c. An employee who separates to enter on active duty with the Armed Forces has the option of either receiving a lump-sum payment for accumulated annual leave or to have the annual leave remain to his/her credit until his or her return to a Federal civilian position from active duty. This second option, however, applies only to annual leave in the employee's regular leave account. Any unused restored leave in a separate account must be liquidated by lump-sum payment at the time of separation.

16. Recredit of annual leave. In addition to the circumstances in which annual leave is recredited under subpars. 17.c and d, an employee's annual leave account is credited when he/she is reemployed with any unused portion of leave for which a refund of the lump-sum payment is required. If reemployed in a position under a different leave system, his/her leave account is adjusted on the same basis as described in subpar. 14.b.

17. Refunding annual leave. In addition to the circumstances in which annual leave is recorded under subpars. 13.b and c, an employee's annual leave account is credited when he/she is reemployed with any unused leave for which a refund of the lumpsum payment is required. If reemployed in a position under a different leave system, his/her leave account is adjusted as described in subpar. 13.b.

a. Refunding a lump-sum payment.

(1) Upon appointment or reemployment in GSA to a position other than an intermittent position that does not have an established regular tour of duty during each administrative workweek, the National Payroll Center checks if the employee received a lump-sum payment for annual leave in his/her former position.

(2) If the employee received a lump-sum payment and the period covered by the payment has not expired, a sum equal to the compensation in his former position (including the amount deducted for income tax) must be collected. The period for which the refund is computed is the calendar period beginning with the date of reappointment and extending to the end of the lump-sum leave period. The amount collected must be deposited in the Department of the Treasury to the credit of GSA. A refund is required whether or not the former position was under the same or a different leave system and whether or not the employee is being reemployed in a temporary position for less than 90 days.

(3) While an immediate refund of the full amount should be obtained, when an employee is unable to refund it in a single payment because of financial hardship, he/she may be permitted to repay it in installments. But the amount owed must be repaid within 12 calendar months. Payments for fractional parts of less than 1 hour are not permitted.

b. Reemployment before making a lump-sum payment.

(1) If an employee is appointed or reemployed before the lump-sum check is issued, no purpose is served by paying an amount which is required to be refunded. Therefore, the National Payroll Center contacts his/her previous employer to see if that office can issue:

(a) A check to the employee for the period he/she was out of the service, less the tax on the amount; and

(b) A separate check for the gross compensation for any unexpired annual leave, drawn to the Treasurer of the United States, to be furnished to GSA or deposited as the Office of Finance directs.

18. Refund of excess annual leave. An employee is required to refund the full amount of any annual leave that may have been credited and/or used in excess of entitlement because of administrative or clerical error.

a. Repayment may be waived under the procedures and guidelines prescribed in COM 4200.1, Waiver of claims for overpayment of pay and allowances.

b. If repayment is not waived, the employee may refund the excess leave under one or more of the following options:

(1) Lump-sum payment in dollar equivalent to the dollar value of the leave at the time it was used;

(2) Lump-sum payment in an equivalent amount of accrued annual leave;

(3) Installment payments in annual leave; i.e., as a charge against later accruing annual leave.

The purpose of these options is to provide for repayment without imposing a significant financial hardship on an employee or requiring the loss of all accrued annual leave. Within this framework, however, repayment should be made in a reasonable period of time.

19. Effect of active military duty.

a. When an employee whose appointment is not limited to 1 year or less leaves his/her position to enter active military duty, he or she may elect to have annual leave remain to his/her credit or he/she may elect to receive a lump-sum payment. However, once such lump-sum payment is made, he/she may not at a later date refund such payment and have the annual leave recredited.

b. Any person who is reemployed in GSA without a break in service or with a break of not more than 3 years after release from active duty, or from hospitalization continuing after discharge for not more than 1 year, will be recredited with whatever leave remained to his/her credit at the time of entry into such service.

20. Leave from former leave systems. Leave earned under the Leave Act of 1936 or any of the other leave systems merged under the leave system now codified in chapter 63 of title 5, U.S. Code, is recredited if the employee enters the same leave system and is entitled to have the leave recredited; however, leave already forfeited may not be revived.

21. Restoration of leave after an appeal. When an employee is restored to duty as the result of an appeal, his or her leave account must be reestablished as a credit or charge as it was at the time of separation up to the maximum amount permitted under the leave system under which the employee is covered. However, the employee is not entitled to exceed the normal maximum amount of leave permitted under the terms of par. 11.

22. Settlement of accounts. Payment for accumulated and current accrued annual leave and for overtime or premium pay due an employee at the time of his or her death shall be paid to his/her survivor(s) in the following order of precedence. This payment bars recovery by another person of the amounts so paid:

a. The beneficiary(ies) designated by the employee in writing received by GSA before death.

- b. If there is no designated beneficiary, to the widow or widower of the employee.
- c. If none of the above, to the child or children of the employee and descendants of deceased children by representation.
- d. If none of the above, to the parents of the employee or their survivors.
- e. If none of the above, to the duly appointed legal representative of the estate of the employee.
- f. If none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of death.

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### CHAPTER 3. SICK LEAVE

1. Purpose. Sick leave is leave which is granted for use when an employee is physically incapacitated to do his or her job, or for related reasons. Such related reasons are:

a. Exposure to a contagious disease that would endanger the health of coworkers. When an employee has been exposed to a contagious disease, but is not required to give care and attendance to an afflicted family member, the supervisor should check with the Health Unit for determination of potential endangerment of coworkers. Sick leave should be granted in those cases where the Health Unit, in conjunction with local health authorities, determines that the health of coworkers would be endangered by the presence of the exposed employee in the workplace. (See par. 10 for return to duty.)

b. Required to give care and attendance to a member of his/her immediate family who is afflicted with a contagious disease.

(1) Routine illnesses. Illnesses such as ear infections, colds, stomach ailments, and rashes are referred to as "routine illnesses." An employee required to stay home in order to care for a family member afflicted with such an illness should not be granted sick leave; annual leave or leave without pay are appropriate for use in such circumstances.

(2) Other illnesses. Highly contagious diseases for which public health officials require quarantine, isolation, and restriction are referred to as "other illnesses" and include, but are not limited to, infectious hepatitis, spinal meningitis and infectious mononucleosis. The supervisor should contact the Health Unit for their determination, in conjunction with local health authorities, as to whether a particular illness is considered to be in this category. An employee required to stay home in order to care for a family member afflicted with such an illness may be granted sick leave. Refer also to ch. 1-12, Absences, for parental and family responsibilities and to FPM Ch. 630, subch. 13.7, Leave for Child Care. (See par. 10 for return to duty.)

c. Dental, optical, or medical examination or treatment. An employee who uses, or attempts to use, sick leave for an absence which does not meet one of the above conditions is subject to disciplinary action.

2. Earning rates.

a. Full-time employees.

(1) Full-time employees with a basic 8-hour workday earn sick leave at the rate of 4 hours for each full biweekly pay period. This amounts to 104 hours or 13 days per year.

(2) Sick leave is earned from the first pay period of employment, and is not affected by the type of appointment or length of service.

b. Part-time employees.

(1) Employees who work on a part-time basis with an established tour of duty earn sick leave at the rate of 1 hour for each 20 hours of duty. Credit may not exceed 4 hours of sick leave for 80 hours of duty in any pay period.

(2) To earn sick leave, part-time employees must have a regular weekly tour of duty.

c. Intermittent employees. Intermittent employees have no established tour of duty and are excluded from leave benefits.

d. Employees on 24-hour or other uncommon tour of duty.

(1) Employees who work 24-hour shifts or other uncommon tours of duty and for whom additional compensation on an annual basis has been authorized, earn and are credited with sick leave for a full biweekly pay period at the following rates:

<u>Hours/Workweek</u>	<u>Sick Leave Rate</u>
60	6 hours
72	7 hours plus 12 hours for the last full biweekly pay period in the leave year.
85	8 hours, plus 21 hours for the last full iweekly pay period in the leave year.

(2) When an employee becomes eligible to receive premium pay on an annual basis, the number of hours in his or her sick leave balance must be converted. Formulas for this conversion and any required subsequent conversions are set forth in ch.2-4d.

e. Sick leave may be credited to an employee's account at the beginning of the pay period in which it is earned, unless it is uncertain how much will be earned. Such sick leave may be used during that pay period.

3. Accumulating sick leave. There is no limit on the amount of sick leave which may be accumulated. Sick leave which is not used in the leave year in which it is earned accumulates and is available for use in succeeding years.

4. Applying for and approving sick leave.

a. The use of sick leave is subject to the approval of the employee's supervisor. Unless the absence can be foreseen, advance written application for sick leave is not required. An employee who is absent because of illness should notify his or her supervisor as early as possible on the first day of the absence. Ordinarily, this must be done no later than 2 hours after the start of the employee's workday. Employees such as Federal Protective Officers, operating engineers, and telephone operators, whose positions necessitate continuous attendance, must notify their supervisor at least 1 hour in advance of their regular tour of duty to allow sufficient time to provide for a substitute, unless prevented from doing so by circumstances beyond their control.

b. Requests for sick leave for medical, dental, or optical examination or treatment must be submitted by the employee prior to the beginning of the leave, except in the case of emergencies.

5. Disapproving sick leave.

a. Supervisors may disapprove an employee's claim for sick leave and charge the time to AWOL, annual leave, or (with the employee's consent) to LWOP if they possess sufficient facts to be reasonably certain that the employee's request is fraudulent.

b. Disciplinary action may be taken when warranted, as set forth in the GSA Administrative Manual, ch. 3, part 8.

6. Supporting evidence for sick leave.

a. Absences of 3 workdays or less.

(1) Normally, an employee's certification will be sufficient to support a charge to sick leave for absences of 3 workdays or less.

(a) Such certification is accomplished by having the employee initial the GSA Form 3575, Time and Attendance Record.

(b) An SF 71, Application for Leave, is required when the absence extends from one pay period to another or when the employee is not located sufficiently near the time and attendance clerk to permit initialing of the record. However, only the face of the SF 71 need be completed.

(c) The SF 71 must be submitted within 2 workdays after the employee returns from sick leave.

(2) When there is reason to believe that the sick leave privilege is being abused by an individual employee, a medical certificate or other acceptable evidence of illness may be required to justify the grant of any sick leave thereafter.

(a) In such instances, the employee must be advised in writing in advance that he/she may be required to present evidence in support of any future claim for sick leave regardless of its duration. After the employee has been notified, the determination of what is acceptable evidence and whether or not evidence is to be required for a specific absence will be a matter for supervisory judgment depending on the individual circumstances.

(b) In the case of an extreme emergency, an entire group of employees may be required to submit evidence for specific absences on sick leave when the Head of the Central Office Service or Staff Office or the Regional Administrator determines that this is in the best interest of the Government.

b. Absences of more than 3 workdays.

(1) Absences of more than 3 workdays must normally be supported by a medical certificate. The reverse of the SF 71 may be used for this purpose. Supervisors may request this

medical certificate at any time during the employee's absence or immediately upon his or her/her return to duty.

(2) Whenever it is unreasonable to require a medical certificate because of a shortage of physicians, remoteness of locality, or because of the circumstances surrounding the illness, an employee's personal statement may be accepted in lieu of a medical certificate. The statement must be in writing and must indicate the nature of the illness and the reason(s) why a medical certificate is not furnished.

(3) The supervisor will determine whether the employee's statement is acceptable in lieu of a medical certificate. If it is not acceptable to him or her, the statement shall be directed to the Central Office or regional Personnel Officer, as appropriate, for final determination as to its acceptability.

#### 7. Leave substitution.

a. When sickness occurs within a period of annual leave, the supervisor may grant sick leave for the period of the illness and reduce the charge against annual leave accordingly.

(1) Application for such substitution must be made within 2 days after return to duty.

(2) The request for leave substitution must be supported by a medical certificate if the absence was in excess of 3 working days. In lieu of a medical certificate, the employee's signed statement may be accepted as provided in subpars. 6b(2) and (3).

b. Regular sick leave which has been applied for and granted becomes a vested statutory right, and annual leave may not be substituted in its place.

c. Generally, unliquidated advance sick leave is carried forward each pay period and from one leave year to another until liquidated by subsequent sick leave accruals.

(1) If the employee so requests, his or her advanced sick leave may be liquidated by a charge against an equivalent amount of annual leave, provided that the annual leave would have been granted upon the employee's request, and that he/she would have had an opportunity to take such leave prior to the time it otherwise would be forfeited at the end of the leave year.

(2) For example, if an employee wishes to substitute 10 days of annual leave for advanced sick leave, his or her request would have to be submitted and approved at least 10 workdays prior to the end of the leave year. If he or she submits the request 5 workdays prior to the end of the leave year, he/she could substitute only 5 days as this is the amount of leave that could actually be taken prior to the end of the leave year.

#### 8. Advancing sick leave.

a. Maximum advance. In cases of serious disability or ailment, and when the exigencies of the situation so require, an employee may be advanced sick leave in an amount not to exceed 30 workdays. This advance may be granted whether or not the employee has any annual leave to his or her credit except where an application for disability retirement has been submitted to the Office of Personnel Management (see b(6), below). Under no circumstances will there be more than the following number of unliquidated hours of advanced sick leave on an employee's record:

(1) For employees who work a 40-hour week or who work 60 or 72-hour workweeks and do not receive premium pay on an annual basis, the limit is 240 hours.

(2) For employees who receive premium pay on an annual basis, the limits are:

(a) For a 60-hour workweek, 360 hours;

(b) For a 72-hour workweek, 432 hours; and

(c) For an 85-hour workweek, 510 hours.

b. Requirement for advancing sick leave. The advance of sick leave is subject to the following requirements:

(1) There must be a reasonable expectation that the employee will return to work upon recovery from the illness.

(2) The illness must be personal; sick leave will not be advanced to care for members of the family.

(3) When an employee is serving under a limited appointment or one which will be terminated on a specified date, he or she may be advanced sick leave up to the total amount of sick leave which would otherwise be earned during the term of that appointment.

(4) A grant of advanced sick leave will be made to an employee only if the total absence from duty on account of illness is for a period of 5 or more consecutive workdays. The actual advance, however, may be for any part of the total absence. If the employee returns to duty and suffers additional illness, he/she may be advanced additional sick leave under the same conditions as those for an initial grant of advanced sick leave.

(5) If an employee's application for disability retirement is pending at the Office of Personnel Management, he/she must use all annual leave in his or her account before advanced sick leave may be granted.

(6) If it is known that an employee will not return to work even if his or her application for disability retirement is disapproved by the Office of Personnel Management, the employee may not be granted advanced sick leave.

(7) If an employee's appointment will be terminated on a specific date, he or she may be advanced only as much sick leave as would be earned during the remaining period of employment. Employees who are scheduled for involuntary separation, have filed for optional retirement, or have, by other evidence, established the fact that they will not be in the service of the Federal Government after a fixed date, are also subject to this restriction.

(8) The advance of sick leave will stop immediately in the case of any of the following events:

(a) As soon as notice of approval is received from the Office of Personnel Management in disability retirement cases;

(b) When it becomes known that the employee will be involuntarily separated or does not intend to return to duty in the event of recovery; or

(c) If for any other reason carrying the employee on advanced sick leave is no longer warranted.

c. Waiver of repayment. An employee who has been advanced sick leave and is unable to return to work because of an incapacity may have his or her debt for unearned sick leave waived if the employee submits evidence supported by an acceptable medical certificate even if he or she retires under optional retirement.

d. Refund of excess advanced sick leave. An employee is required to refund the full amount of a sick leave that may have been advanced in excess of entitlement through administrative error. Refund shall be as specified in ch. 2-17.

#### 9. Approving advanced sick leave.

- a. Application for advanced sick leave must be supported by medical certificate signed by a physician or practitioner.
- b. Since individual cases present different circumstances, it is not practical to establish definite and arbitrary standards for approval. It is necessary, however, for each supervisor to make a careful evaluation of each application and limit approval to only those cases which are meritorious.

(1) In addition to the factors listed in subpar. 8b, such additional factors as the employee's previous leave and service records should be considered by the supervisor in approving advanced sick leave.

(2) Consideration should also be given to the circumstances which have caused accumulated sick leave to be exhausted. If sick leave was used in small amounts as it was earned or under any conditions which might indicate abuse of the leave privilege, an advance of sick leave would ordinarily not be warranted.

c. In instances where there is medical evidence of a bona fide illness, reason to believe the employee will return to work if he or she recovers, and if the employee has no annual leave to his or her credit, requests for advanced sick leave should be approved.

#### 10. Return to duty from absences involving contagious diseases.

- a. An employee who has been on sick leave with a contagious disease or because of exposure to a contagious disease must submit a medical certificate indicating he or she is physically fit for restoration to active duty. In addition, where the services of a Federal medical officer are available, the employee may be required to undergo an examination and may return to duty only with the approval of the medical officer.
- b. Before an employee may return to duty after absence for the treatment of tuberculosis, a statement of fitness for duty must be completed by the employee's physician and submitted by the appropriate Personnel Officer to a Federal medical officer or to the U.S. Office of Personnel Management, Washington, DC 20415, for prior approval.

#### 11. Transferring sick leave.

- a. Between positions under ch. 63, title 5, United States Code. The sick leave account of an employee who transfers without a break in service of 1 or more workdays will be credited with the sick leave which was due him or her in the previous agency and charged with any unliquidated advances.
- b. Between different leave systems. When sick leave is transferred between different leave systems on an adjusted basis, 7 calendar days of leave is considered as 5 workdays of leave.
- c. Partial transfer. When an employee transfers to a position under a different leave system that allows transferring only part of the sick leave balance, the untransferred leave is recredited if he or she returns to the original leave system without a break in service of more than 3 years.
- d. To a position not under a sick leave system. When an employee transfers to a position to which sick leave cannot be transferred, the untransferred leave balance is held in abeyance and is recredited if he or she returns to the leave system under which it was earned without a break in service in excess of 3 years. Under the GSA automated payroll system (PIPS), this leave balance is maintained in the employee's record, if, for example, he or she transfers from a regular to an intermittent position. The sick leave balance continues to appear on such employee's Pay and Leave Statement, but is not available for use until the employee returns to the former leave system under the conditions described above.

12. Recrediting sick leave. In addition to the circumstances under which sick leave is recredited as set forth in subpars. 10c and d, sick leave is also recredited to an employee's account after a break in service of not more than 3 years. Exceptions applicable to certain employees are described in ch. 630 of the Federal Personnel Manual.

13. Leave from former leave systems. Leave earned under the Leave Act of 1936 or any other of the leave systems merged under the Annual and Sick Leave Act of 1951, is recredited if the employee enters the same leave system and is entitled to have the leave recredited; however, leave already forfeited may not be revived.

#### 14. Effect of active military duty.

- a. When an employee whose appointment is not limited to 1 year or less leaves his or her position to enter active military duty, the sick leave balance remains to his/her credit.
- b. If reemployed in GSA without a break in service, or with a break of not more than 3 years after his or her release from active military duty, or from hospitalization continuing after discharge for not more than 1 year, he/she will be recredited with whatever sick leave remained to his or her credit at the time of entry into the military service.

15. Restoration after appeal. When an employee is restored to duty as the result of an appeal, his or her leave account must be reestablished as a credit or charge as it was at the time of separation.

#### 16. Retirement credit for unused sick leave.

- a. The service of an employee covered under the Civil Service Retirement System (CSRS), who retires on immediate annuity or dies leaving a widow or widower who is entitled to survivor annuity, is increased by the days of unused sick leave to his or her credit.
- b. The days of unused sick leave added are used only in counting the number of years and months of service for annuity computation purposes; they cannot be added in computing the

employee's high-3 average pay or for the purpose of meeting the minimum length of service required for retirement eligibility.

- c. In disability retirement and survivor annuity cases involving a guaranteed minimum annuity computation, unused sick leave does not increase the guaranteed minimum annuity to an amount in excess of 40 percent of the high-3 average pay. However, the unused sick leave is added after projecting service to age 60 when this method produces the guaranteed minimum annuity.
- d. Additional information on the use of sick leave credits for CSRS purposes may be found in FPM Supp. 831-1, Retirement.
- e. Employees covered under the Federal Employees Retirement System (FERS) are not given additional service credit for unused sick leave.

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### CHAPTER 4. LEAVE WITHOUT PAY (LWOP)

#### 1. Definitions.

a. Leave without pay (LWOP) is a temporary nonpay and nonduty status granted at an employee's request. LWOP may be granted only for the hours of duty in an employee's basic workweek. Hence LWOP does not cover nonpay status on days an employee is not scheduled to work or for hours or days of regular overtime or irregular or occasional overtime. (For definitions of basic workweek, regular overtime, and irregular or occasional overtime, see ch. 12.) Both full-time and part-time employees may be placed on LWOP.

b. Absence without leave (AWOL) is an absence from duty that is not authorized or approved. AWOL is a nonpay status resulting from an agency determination that GSA will not grant any type of leave (including LWOP) for an absence for which there was no advance authorization or for which a request for leave was denied, e.g., sick leave denied for an alleged illness for lack of persuasive evidence that the employee was actually sick. LWOP is different from AWOL in that LWOP is granted and permitted. (See ch. 1-15.)

c. LWOP should also be distinguished from other periods of nonduty and nonpay status such as furlough, suspension, and the placement of seasonal employees in nonpay status after the end of their seasonal employment. Intermittent employees cannot be placed on LWOP. They have no established tour of duty and no basic workweek from which to take leave.

d. Enforced leave is leave imposed by management on the employee without his/her request or against his/her wishes. Supervisors thinking about putting an employee on any kind of enforced leave should contact the employee and/or labor relations specialists in their servicing personnel office. The rules are complex, and the case law on these matters is unclear and still evolving.

#### 2. Application, approval, and documentation.

a. LWOP is a matter of administrative discretion. With two exceptions employees cannot demand LWOP as a matter of right. One exception is for disabled veterans who must be granted LWOP, if necessary, for service-connected medical treatment. The second exception is for a member of the National Guard or Armed Forces Reserve who requests LWOP for military training duties.

b. For short periods of 5 days or less, supervisors may allow employees to make oral requests for LWOP. For longer periods, requests for LWOP must be submitted in writing on SF 71, Application for Leave. Supervisors or local policy may require a written application for short periods of 5 days or less.

c. Supervisors may grant up to 6 months LWOP. LWOP for periods of 6 months or more must be approved by the Personnel Officer. Absences over 1 year no longer require the approval of the Director of Personnel. Personnel officers should provide the Director of Personnel with a copy of the SF 50, Notification of Personnel Action, and supporting documentation for nonroutine requests for LWOP over 1 year. This is not necessary for routine requests for LWOP, including for officers or employees of a union representing Federal employees, or pending adjudication of applications for disability retirement by the Office of Personnel Management or of workers' compensation cases by the U.S. Department of Labor. In this context, "supervisors" means whatever level of supervision has the delegated authority to act. It does not mean any particular level of supervision., e.g., first level, second level. Check current delegations of authority.

d. GSA policy is to keep employees on LWOP (hence on the rolls) for up to 1 year to protect their status and benefits pending action by the Office of Workers' Compensation on a claim resulting from work-related illness or injury.

e. LWOP may not extend beyond the termination of the employee's appointment. Otherwise, there is no limit prescribed by law or regulation on the amount of LWOP that can be granted.

f. When LWOP is granted to an employee to seek other Federal employment outside his/her commuting area, as in subpar. 3c(5), the employee must submit a resignation on SF 52, Request for Personnel Action, which will be kept on file until the employee is transferred or the approved LWOP expires, whichever comes first.

g. In most cases, employees request LWOP because they do not have enough annual leave or sick leave to cover all or part of a requested absence, but employees are not required to exhaust their annual and sick leave benefits to be granted LWOP. For instance, an employee may request LWOP instead of annual leave during the advance notice period of a separation for failure to accept a new assignment or to relocate with his/her position. At their discretion, supervisors and managers may take leave balances into account in deciding whether to grant LWOP.

h. LWOP is recorded on GSA Form 3575, Time and Attendance Record, and on GSA Form 873, Annual Attendance Record, in accordance with the HB, Payroll Operations - Timekeeper Handbook (COM P 4281.1), June 24, 1987.

i. Employees in nonpay status for periods of 7 calendar days or more may be eligible for unemployment compensation. Such employees must be given a copy of SF 8, Notice to Federal Employee About Unemployment Compensation. Check with the personnel office. LWOP over 30 calendar days must be documented with an SF 50.

j. Generally, absences properly charged to LWOP cannot be converted to annual or sick leave. However, in the case of a grant of LWOP pending disability retirement, sick or annual leave may be retroactively substituted for LWOP once the claim is disallowed.

### 3. Standards for granting LWOP.

a. Regardless of the length of the period of LWOP, each request should be examined closely to ensure that the value to the Government or the serious needs of the employee are sufficient to offset the costs and administrative inconvenience of keeping an employee on LWOP. Among the matters to be considered are:

- (1) The loss of services that may be vital to the organization;
- (2) The fact that the employee still encumbers his/her position;
- (3) The agency's obligation to provide employment at the end of LWOP;

(4) Within limits, the period of LWOP is creditable for within-grade increases (see subpar. 4b), for leave accrual (see subpar. 3a(5), below), for initial, supervisory, and managerial probationary periods, for conversion to career status, for retirement, and for severance pay. Retirement and severance pay are affected by changes in the service computation dates (SCD's) for retirement and leave. In most cases LWOP over 6 months is not creditable for the SCD-leave. The details of recalculating SCD's, termination dates of probationary periods, or effective dates of conversions to career status for noncreditable LWOP are beyond the scope of this HB (see subch. S-6 and subch. S-16, FPM Supplement 296-33, The Guide to Processing Personnel Actions). LWOP is also creditable for service agreements because time in LWOP status is considered Government service within the meaning of 5 U.S.C. 5724(i) (B-184948, November 18, 1975);

(5) Employees on LWOP continue to accrue sick and annual leave when their nonpay status in the leave year totals less than 80 hours. At any time during a leave year that a full-time employee's absence in a nonpay status (including LWOP) totals 80 hours, his/her sick leave credit is reduced by 4 hours and annual leave credit by 4, 6, or 8 hours, depending on his/her leave category;

(6) Employees are eligible for continued basic life insurance coverage, without cost to the employee, for up to 12 months. The 12 months' nonpay status may be continuous or broken up by periods of less than 4 consecutive months in pay status. After 4 consecutive months in pay status, the employee is entitled to begin the 12 months' continuation of basic insurance anew (5 CFR 870.501(c)); and

(7) Employees are eligible for continued enrollment for health insurance coverage for up to 365 days. The 365 days' nonpay status may be continuous or broken up by periods of less than 4 consecutive months in pay status. After 4 consecutive months in pay status, the employee is entitled to begin the 365 days' continuation of enrollment anew (5 CFR 890.303(e)). The employee pays the employee share of the health insurance premiums and the Government pays the employer's share. Note that 365 days does not always equal 1 year or 12 months; leap years have 366 days.

b. As a condition for approving LWOP for extended periods, there should be a reasonable expectation that the employee will return to duty at the end of the LWOP. In addition, at least one of the following benefits should also be apparent:

- (1) Fulfillment of parental or family responsibilities;
- (2) Increased job ability;
- (3) Protection or improvement of employee's health; or
- (4) Furtherance of a program of interest to the Government; service in the Peace Corps is a good example.

c. Examples of situations in which approval of LWOP for long periods of time (over 1 month) would be proper (if all other factors are favorable) include:

- (1) Childbirth or adoption where an adoptive parent must make a commitment to stay home with the adopted child for the first months;
- (2) To recover from an illness or disability that is not permanent or disqualifies the employee from his/her job, and when continued employment or immediate return to duty would threaten the employee's health or that of other employees;
- (3) To protect the employee's status and benefits pending an initial decision by OPM on an application for disability retirement;
- (4) To protect employee status and benefits pending action by the Office of Workers' Compensation on a claim resulting from work-related illness or injury. GSA policy is to keep employees on the rolls for up to 1 year, with possible extensions;
- (5) To avoid a break in the continuity of service of career or career-conditional employees who are seeking other Federal employment outside their commuting area;
- (6) To pursue a course of study at a college, university, or vocational school or to carry out research when the study or research is related to the employee's work or, if unrelated to the employee's work, would contribute to the mission of GSA, or would enhance the employee's opportunities for upward mobility;
- (7) For temporary service in non-Federal sectors, whether public or private, when there is a reasonable expectation that the employee will return to work and the service will contribute to public welfare and/or the experience gained by the employee will serve the interests of GSA;
- (8) To serve as an officer or employee of a union representing Federal employees under section 7131 of title 5, United States Code; or



- (9) To gradually ease into retirement over a period of several months by arranging a work schedule of 1 or 2 days a week of LWOP combined with 4 or 3 days of normal work.
4. Terminating LWOP.
- a. LWOP is generally ended by return to duty or by appointment or transfer to another Federal position. If LWOP was documented with an SF 50, then the return to duty must be similarly documented. When LWOP granted in accordance with subpar. 3c(5) expires, the personnel office will process the employee's resignation, SF 52.
- b. For GS employees, time in LWOP status is creditable service in the computation of the waiting period for a within grade increase (WGI) up to certain limits. Time in LWOP over those limits will extend the end of the waiting period by the amounts over:
- (1) Two workweeks in the waiting period for steps 2, 3, and 4;
- (2) Four workweeks in the waiting period for steps 5, 6, and 7;
- (3) Six workweeks in the waiting period for steps 8, 9, and 10;
- c. For full-time employees, the workweeks in subpar. 4b equate to 80, 160, and 240 hours respectively. For part-time employees, the hourly equivalent depends on the number of hours in the basic work week. For a part-time employee working 24 hours per week, they are 48, 96, and 144 hours respectively. These are total hours; it does not matter whether LWOP up to the limit is continuous. LWOP above these amounts is "excess LWOP" and extends the waiting period for the next within-grade increase.
- d. For FWS employees, time in LWOP status is creditable service in the computation of the waiting period for a within grade increase up to certain limits. Time in LWOP over those limits will extend the end of the waiting period by the amounts over:
- (1) One workweek in the waiting period for steps 2;
- (2) Three workweeks in the waiting period for steps 3;
- and
- (3) Four workweeks in the waiting period for steps 4, and 5;
- e. The postponement of the effective date of the WGI is typically longer than the number of hours of excess LWOP. Within-grade increases take effect the first day of the first pay period after the end of the waiting period. Even 1 hour of excess LWOP postpones the end of the waiting period beyond the end of the pay period in which it would normally fall. Hence it postpones the WGI to the beginning of the following pay period. For example, assume that, without any LWOP, the effective date of the next WGI for a full-time employee in the waiting period for step 5 is September 27 (which means his/her waiting period ends on September 26). If that employee has taken a total of 163 hours of LWOP while in the waiting period, the effective date of the WGI is postponed to October 11, the first day of the next pay period. The 3 hours of excess LWOP extended the end of the waiting period beyond September 26, into the pay period September 27 to October 10. October 11 was the first day of the first pay period after the end of the waiting period.
- f. Time in LWOP status, regardless of its length, is fully creditable for retirement, leave accrual rates, within-grade increases, and severance pay when taken in connection with a job related illness or injury. (See ch. 10.)
- g. An employee who is on LWOP for a long time should keep the supervisor informed of his/her current status, changes in status, and plans for returning to duty.
- h. If supervisors and managers learn that an employee on LWOP will not or cannot return to work, they must take appropriate steps to separate the employee. The employee should continue on LWOP until separation.

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Figure 5-4. Employee absences for court or court-related service [Link](#)

1. Definitions.

a. Court leave. Court leave is the authorized absence, without charge to leave or loss of pay, of an employee from work status for jury duty, or for attending judicial Proceedings in a nonofficial capacity as a witness when the United States, the District of Columbia, or a State or local government is a party. This includes acting as a witness on behalf of a private party in the proceedings. The court or judicial proceedings may be in the District of Columbia; a State, territory, or possession of the United States including the Commonwealth of Puerto Rico; the Republic of Panama; or the Trust Territory of the Pacific Islands.

b. Judicial proceedings.

(1) The term "judicial proceeding" covers any action, suit, or other proceeding of a judicial nature (including any condemnation, preliminary, informational, or similar proceeding), but does not include an administrative proceeding.

(2) All stages (preliminary hearing, inquest, trial, or deposition taking) of the proceeding are covered including hearings and conferences before a committing magistrate, court, or commission, grand jury proceedings and coroners' inquests, and hearings and conferences conducted by a prosecuting attorney to determine whether an information or charge should be made in a case.

c. Summoned. The term "summoned" does not suggest a need for a subpoena, but does mean that the summons should be an official written request, invitation, or call, from the court or authority conducting the proceeding. It also means that court leave cannot be used for strictly voluntary appearances. The time an employee-plaintiff spends testifying in his or her own behalf does not meet this definition of "summoned" (title 5, U.S.C., section 6322.)

d. Witness service. Witness service is testifying: (1) in an official or nonofficial capacity, or (2) producing official records in a judicial proceeding, or (3) being called to give a deposition (although the individual may not have received a summons).

2. Jury service.a. Agency cooperation.

(1) In view of the importance of trial by jury in the American system of justice, GSA does not ask that employees be excused from jury duty except in a real necessity.

(2) When a supervisor believes it is essential that an employee be excused from jury duty, the immediate supervisor or a higher level official prepares a signed letter of recommendation to the court with the advice and concurrence of the Central office or Regional Personnel Officer.

(3) Each letter of recommendation must include the supervisor's justification. The fact that the absence will be a serious operational or administrative inconvenience is not sufficient reason for requesting that an employee be excused from jury duty. The only acceptable reasons are those which involve unusual circumstances not normally occurring in the operations of the activity concerned. For example, an excusable employee might be engaged in the preparation of a special congressional report which is extremely complex, has required many hours of special research, and is in such form that another employee could not complete the project for submission by the target date.

b. Employee eligibility.

(1) Court leave for jury duty is granted to both permanent and temporary employees, full-time or part-time, except those employed on an intermittent basis.

(2) A night-shift employee who performs jury service during the day is granted court leave for any regularly scheduled night tour of duty, and is entitled to night differential (29 Comp Gen. 427).

(3) An employee called for weekday duty whose regular tour of duty includes Saturday or Sunday may be absent on weekends without charge to annual leave and may be paid the premium pay normally received for work on Saturday or Sunday. If the employee is excused from jury service on a weekday, the employee must work a weekend day in place of the excused jury service, if it does not cause a hardship (54 Comp. Gen. 147).

c. Use of other leave.

(1) If an employee is on annual leave when called for jury service, court leave should be substituted (27 Comp. Gen. 83, 88). Annual leave that would otherwise be forfeited at the end of the leave year cannot be used (unpub. Comp. Gen. Dec. B-119969, March 3, 1955).

(2) An employee on annual leave who has been given advance notice that he will be separated from the Federal service because of a reduction in force and who is summoned as a juror, otherwise entitled to court leave, may substitute it for annual leave until separated (27 Comp. Gen. 414).

d. Pay status required. Court leave is available only to an employee who would be on duty or on leave with pay except for the jury duty. An employee on LWOP, although otherwise eligible, may not receive court leave when called to jury duty (27 Comp. Gen. 83, 88).

e. Duration of jury service.

(1) Any employee who is under a summons to serve on a jury receives court leave for the entire period, from the date on which he or she must report to the court to the time the employee is discharged, regardless of the number of hours per day or days per week actually served (20 Comp. Gen. 131).

(a) The term of jury service does not include time during which the employee is excused or discharged but kept on call by the court for an indefinite period or for a definite period of more than one day (20 Comp. Gen. 181).

(b) When excused or discharged by the court but kept on call, the employee is not entitled to court leave. The employee must apply for any annual leave, earned compensatory time, LWOP, or sick leave, as needed.

(2) If excused or released for a day or substantial part of a day, the employee must return to work, unless doing so would cause the employee a hardship because of the distance from home, duty station, or the court (26 Comp. Gen. 413).

3. Witness service.
- a. Eligible employees. Court leave to serve as a witness is granted to both permanent and temporary employees, full- and part-time, except when they appear as witnesses in a nonofficial capacity in behalf of a private party, and the government of the United States or the District of Columbia, or a state or local government is not a party. (See c(4), below.) Intermittent employees shall not receive court leave.

b. Witness in an official capacity.

(1) When an employee is summoned or assigned by GSA to testify in an official capacity or to produce official records, he or she is in an official duty status and is entitled to regular compensation without regard to entitlement to court leave (38 Comp. Gen. 142).

(2) An employee is in an official capacity when called as a witness in the official capacity of a former position in the Federal service as well as in the official capacity of his or her present position (unpub Comp. Gen. dec. B-160343).

(3) An employee required to appear as a party or a witness in the prosecution of an employee compensation action against a person other than the United States is in an active duty status while so appearing. (5 U.S.C. 8131 (a)).

c. Acting as a witness in nonofficial capacity.

(1) When an employee is summoned as a witness in a judicial proceeding to testify in a nonofficial capacity in behalf of a private party in any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party, the employee is entitled to court leave during the time he or she is absent as a witness.

(2) When an employee is summoned or assigned by GSA to testify in a nonofficial capacity on behalf of the government of the United States or that of the District of Columbia, the employee is in an official duty status and is entitled to regular compensation without regard to entitlement to court leave.

(3) When an employee-plaintiff testifies in his or her own behalf, the time spent doing so does not meet the requirement of having been "summoned" and granting court leave is not appropriate. (See 1.c., above.)

(4) If witness service in a nonofficial capacity is performed on behalf of a private party in connection with a judicial proceeding to which the Government of the United States or that of the District of Columbia, or a State or local government is not a party, the employee's absence from duty must be charged to annual leave or to leave without pay, and he or she may accept expenses paid for the service (15 Comp. Gen. 196). If the summons itself is not clear about who is a party to the proceeding, it should be referred to a Central Office or Regional Personnel Officer. The personnel officer must find out, perhaps by contacting the authority issuing the summons, and note the answer in the records.
4. Applying for court leave.
- a. As in a planned absence from work for any purpose, an employee who is summoned for, or otherwise expects to be absent from work for jury duty or witness service should inform his or her supervisor as soon as possible. Leave (court, annual, LWOP) should be requested by a timely submitting of an SF-71, Application for Leave.

b. If the absence is to be charged to court leave, the employee should submit a copy of the summons or call for jury duty or witness service with the SF-71 to the supervisor.
5. Returning to duty from court leave. Upon returning to duty, an employee who has been on court leave must furnish the supervisor with the following documents:
- a. A Certificate of Attendance verifying the witness service or jury duty;

b. A written statement showing any witness or jury fees paid; and

c. The check(s) covering the amount received. This must be sent to Region 6, Accounts Receivable Branch (6BCR) for deposit. (See PFM P 4282.1, HB, Payroll Operations-Timekeeper.)
6. Plaintiff in civil action - Civil Rights Act. An employee plaintiff who prevails in a civil rights action (or a similar action) against a Federal agency which is related to or caused by a violation of the Civil Rights Act of 1964 is entitled to official time for attending the trial. This entitlement is decided at the end of the court action and exceeds any entitlement to court leave for summoned witness service which may be granted in accordance with paragraph 3 of this chapter. During the court action supervisors may grant annual leave or LWOP to the employee-plaintiff, as appropriate for court attendance; but, if the employee-plaintiff prevails, any annual leave must be restored, and official time substituted for leave for court attendance (59 Comp. Gen. 290).
7. Time spent preparing for trial. If the employee is a party in a suit against the Government, the time the employee-plaintiff spends preparing for the trial, including answering the Government's interrogatories and/or attending the trial, is not included within the meaning of the word "witness" and does not qualify for court leave.
8. Court leave guide. Figure 5-4 outlines the above instructions on absence of employees in connection with court or court-related services. [Link](#)  
(Note: The link for Figure 5-4 is no longer active. Please refer to: "Fact Sheet: Court Leave" from OPM's Pay & Leave: Leave Administration website).

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## CHAPTER 6. MILITARY LEAVE

### 1. Definitions.

- a. Military leave. Military leave is a leave of absence without charge to other leave (e.g., annual leave) or loss of pay, which is granted to employees who are members of reserve components of the Armed Forces (including members of the National Guard) on days during which they are on active military duty or are engaged in field or coast defense training, are on active Federal or State service in aid of law enforcement, or are ordered on parade or encampment as members of the District of Columbia National Guard (DCNG) (5 U.S.C. 6323). Military leave is a right of the employee concerned. If performed for the purpose and within the limitations specified in law, there is no administrative authority to deny such leave (44 Comp. Gen. 224). Military leave is leave without loss of pay, status, seniority, or other leave and is not to be confused with military furlough or leave of absence.
- b. Military furlough or separation. Military furlough is a period of unpaid absence when an employee is ordered to extended active duty for general service with the Armed Forces. When an employee who is a reservist is ordered to an initial period of active duty for training of at least 3 consecutive months under 38 U.S.C. 2024(c), he or she may be granted a leave of absence, furloughed, or separated (5 CFR 353.104 and FPM Letter 630-29). Any employee who is not on a temporary appointment of less than 1 year and who is ordered to active duty under 38 U.S.C. 2021 or 2024(a) or (b) that will exceed 1 year must be separated or furloughed after using up any military leave left (5 CFR 353.104 and FPM Letter 630-29). For a member of a reserve component on extended active duty for training or inactive duty training, furlough or separation may be considered as an alternative to extended leave of absence under 38 U.S.C. 2024(d).
- c. Leave of absence. Leave of absence is granted for periods during which a member of a reserve component is required to perform inactive duty for training or inactive duty training. A leave of absence may include military leave, annual leave, and leave without pay (LWOP). A leave of absence must be granted upon presentation of proper military orders by an employee who has unused military or annual leave. The granting of extended LWOP is discretionary. However, before extended LWOP is denied, the relative impact of an employee's furlough or separation and any consequent restoration rights should be considered. Leave of absence may also be granted because of a compensable injury (FPM ch. 353, subch. 6).
- d. Reserve components. The reserve components of the Armed Forces (referred to in the following paragraphs as "reserve components") are listed below as defined in 10 U.S.C. 261 and 32 U.S.C. 101. Under this definition reserve components include both the following reserve and National Guard organizations:
- (1) The Army National Guard of the United States,
  - (2) The Army Reserve,
  - (3) The Naval Reserve,
  - (4) The Marine Corps Reserve,
  - (5) The Air National Guard of the United States,
  - (6) The Air Force Reserve, and
  - (7) The Coast Guard Reserve.
- e. Service suitable for military leave. Employees are eligible for military leave or the following types of service.
- (1) Active duty or field or coast defense training. Military leave may be granted when a Federal employee is ordered to active duty or field or coast defense training as a member of a reserve component under 32 U.S.C. 502, 503, 504, or 505 (5 U.S.C. 6323(a)(1)). There is no distinction between voluntary and required active duty for training under 5 U.S.C. 6323 (Comp. Gen. B-208706, Aug. 31, 1983).
  - (2) Law enforcement. Military leave may be granted when a Federal employee is ordered to active duty to provide military aid to enforce the law as a member of a reserve component in the form of either Federal service under 10 U.S.C. 331, 332, 333, 3500, or 8500 or full-time service for a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States (5 U.S.C. 6323(b)).
  - (3) Parade or encampment by DCNG. Military leave must be granted to a federal employee who is a member of the District of Columbia National Guard and is ordered to parade or encampment by the commanding general (Title 39, District of Columbia Code and 5 U.S.C. 6323(c)). Encampment under 39 D.C. Code 607 and field training under 32 U.S.C. 502 and any reasonably connected duty are considered the same under this chapter (44 Comp. Gen. 225).
  - (4) Before extended active duty. An employee who is ordered to extended active duty under 38 U.S.C. 2021 or 2024 (a) or (b) may use up any entitled military leave before separation or furlough (FPM Letter 630-29).
- f. Service unsuitable for military leave. Employees are not eligible for military leave for the following types of service:
- (1) Summer training as members of the Reserve Officers Training Corps (ROTC), when employee may be carried in an annual leave status (52 Comp. Gen. 755);
  - (2) Temporary Coast Guard Reserve;

- (3) Participation in parades by members of the State National Guard (see subpar. 5c. for exception);
- (4) Training with a State defense organization or State military organization that is not a part of the National Guard, or any other organization created by the State in the absence of the State National Guard during an emergency;
- (5) Inactive duty training, including drills, meetings, and training assemblies as a member of the National Guard or other reserve component;
- (6) Civil Air Patrol, established as a civilian auxiliary of the United States Air Force;
- (7) Time taken on a workday to travel to the place where the training is to begin, unless military training orders cover travel time required; and
- (8) Active duty as a commissioned officer in the Reserve Corps of the US. Public Health Service.

2. Eligible employees. The term "employee" or "employees" used throughout this chapter refers to those defined below. Upon presentation of valid orders, the employees must be granted any accrued or entitled military leave in the amounts stated in their orders up to the maximums specified in 5., below.

a. For any suitable military duty. Full-time career employees as defined under 5 U.S.C. 2105 with permanent, TAPER, or term appointments or temporary appointments of more than 1 year and who are members of the reserve components listed above are eligible for military leave. Employees who are appointed under the Intergovernmental Personnel Act (5 U.S.C. 3374) and who are members of the reserve components listed above are eligible for military leave with pay, if appointed for periods in excess of 1 year.

b. For active duty or field or coast defense training. In addition to those defined in a., above, employees characteristics described above who are part-time with a 16 to 32-hour regularly scheduled tour of duty per week, as defined under 5 U.S.C. 3401(2), are eligible for military leave to participate in active duty or field or coast defense training.

3. Ineligible employees. Employees with temporary appointments not to exceed one-year, part-time appointments with scheduled tours of less than 16 hours or more than 32 hours, or intermittent appointments are not eligible for military leave.

#### 4. Applying for and approving.

a. The employee must apply to the supervisor for military leave by submitting an SF 71, Application for Leave, at least 2 weeks in advance of departure or as soon as it is within the power of the employee to do so before leaving for active duty.

b. A copy of the order calling the employee to military duty should accompany the SF 71, but may be submitted later, if necessary.

c. If valid orders are not submitted before an absence for military duty, an employee still must be granted available military leave. Although failure to provide adequate notice before taking military leave may be reason for disciplinary action, military leave is a right of an eligible employee and cannot be denied if orders are presented or there is reason to believe that orders will be presented.

d. Upon return to duty, the employee must submit to his or her supervisor a certificate of attendance from the commanding officer showing the days of military duty. The certificate may be in the form of an endorsement on the orders, showing dates of reporting to and separation from duty. If orders were not presented before leave, then they must be presented upon return to duty or the leave record must be amended to charge the absence to annual leave, LWOP, or absence without leave. The employee who is unable to produce military orders at this point must be required to show why he or she is not at fault before a charge to annual leave or leave without pay is made.

e. Along with the SF 71, a copy of the military orders supporting the leave request must be sent to the National Payroll Center (6BCY).

#### 5. Accruing and granting.

a. Field or coast defense training. The following guidelines pertain to military leave defined in 1e(l), above.

(1) 30-day limit per absence. Except as provided in (3)(a) and (b), below, military leave of absence with pay is limited to a maximum of 30 days during each fiscal year, regardless of the number of training periods in the fiscal year. The leave may be taken intermittently, a day at a time, or as otherwise directed under orders issued by military authority. However, military leave under this statute may not be charged in amounts of less than 1 day. (See also FPM Letter 630-30 for examples and guidance concerning accrual of military leave under this paragraph.)

(2) 15-day accrual and carryover. A full-time employee who is a member of a reserve component accrues a total of 15 days of military leave per year, credited at the beginning of the fiscal year or upon the first appointment, and may carry over to the next fiscal year a maximum of 15 days of unused military leave. The full 15 days of accrued military leave, as well as any carryover, may be granted from the first day of the fiscal year or upon first appointment in the Federal Government, whether or not an employee is expected to be employed with the Federal Government for the entire year.

(3) Part-time accrual and carryover. A part-time employee who is a member of a reserve component accrues part of the full-time military leave credit that is in proportion to the percent of a normal 40-hour workweek that the part-time employee works. The amount is credited, with up to 15 days of carryover military leave from the previous year, for the employee's use at the beginning of the fiscal year or upon the first appointment in the Federal Government (5 U.S.C. 6323(a)) (see par. 1(c)).

(a) Maximum credited military leave must be calculated based on a current regularly scheduled tour of duty when the leave is charged. If a part-time employee changes his or her tour of duty after the beginning of a fiscal year, creditable military leave as of that date is calculated by determining the military leave for 1 year under the new tour of duty, adding carryover and then subtracting the military leave already used during the current fiscal year.

(b) When the hours of a part-time employee's regularly scheduled tour of duty vary cyclically over a period of weeks (e.g., repeating a cycle of 30, 20, 35, and 25 hours per week), the scheduled hours of duty for the cycle are averaged for use in figuring military leave accrual.

(c) Fractions of days are accrued in eighths of days and carried forward to a new fiscal year; however, only full days are charged. (One-eighth of a day = .125 day)

(4) Accrual formula. Accrued military leave can be calculated using the general formula: (regularly scheduled hours divided by 40) multiplied by 15, minus the current year's used military leave, equals accrued military leave. This amount, is credited to the employee's military leave account. Plus up to 15 days of unused carryover from the previous fiscal year and minus any fraction of a day, it is the maximum amount of military leave that can be granted during that fiscal year.

(5) Recrediting military leave after transfer.

(a) When an employee (as defined in 2., above) transfers from another Federal agency or is reemployed within the same or the immediately following fiscal year, unused military leave is recredited to the employee and may be used within that fiscal year or carried over into the next fiscal year (see par. 1(a)).

(b) When an eligible employee transfers from GSA to another Federal agency, his or her unused 30-day and 22-day military leave must be calculated in hours and entered in the remarks area of the SF-1150, Record of Leave Data.

b. Law enforcement. The following guidelines pertain to military leave defined in 1e(2), above.

(1) Federal employees who are members of a reserve component of the Armed Forces are entitled to 22 additional workdays of leave in a calendar year for periods of active Federal service in aid of law enforcement and service to provide public assistance, for example, during a natural disaster such as a flood, earthquake, or hurricane (see par. 1e(2) and 5 U.S.C. 6323(b)). (For employees with uncommon tours of duty see 5, below.)

(2) When leave under this entitlement is used up, an eligible employee may be granted available annual leave or military leave available under 5 U.S.C. 6323(a) for additional law enforcement service (49 Comp. Gen. 233).

(3) The workdays of leave under this entitlement must be converted into and charged in hours. Military leave under this entitlement should be charged on the same basis that annual and sick leave are charged under FPM chapter 2-4(a). The limit under 5 U.S.C. 6323(b) of 22 days or 176 hours corresponds to a normal 40-hour workweek of five 8-hour days (49 Comp. Gen. 233) (see par. 11d).

(4) Part-time employees are not entitled to any of the 22 days of military leave under this entitlement.

(5) Employees meeting the definition for uncommon tours of duty in ch. 1 of this handbook must have their maximum leave entitlement adjusted as annual leave is adjusted under ch. 2-4d of this handbook and FPM Supplement 990-2, Book 630, Subchapter 2 (49 Comp. Gen. 233).

c. Parade or encampment by DCNG. Employees who are members of the DCNG and are otherwise eligible are entitled to leave without loss in pay or time, without limit, for each day of a parade or encampment ordered or authorized by the commanding general under title 39, District of Columbia Code (see 1e(3) and 5 U.S.C. 6323(c)).

6. Limits on granting. Military leave is a right of the employee concerned. If performed for the purpose and within the limitations specified in law, there is no administrative authority to deny such leave (44 Comp. Gen. 224).

a. 30-day field or coast defense training duty.

(1) An employee may not be granted more than 30 days military leave with pay for any one period of active duty, whether that period is wholly in 1 fiscal year or extends over more than 1 fiscal year (unless there is a return to civilian duty), or whether more than one set of orders is involved (35 Comp. Gen. 708).

(2) When an employee is granted the maximum 30 days military leave during the fiscal year, returns to civilian duty, and is later ordered to a second period of training duty, if the second period extends into the next fiscal year and the employee was in a pay status upon entering the second period, he or she may be granted military leave beginning on the first day of the new fiscal year (see par. 1(d)).

(3) There is no requirement that military leave be granted for the first part of a period of military duty that is longer than an employee's total accrued military leave, as long as the intent of 5 U.S.C. 6323 is otherwise observed.

(4) Nonworkdays falling within a continuous period of absence on military training duty are charged against accrued military leave. Nonworkdays occurring at the beginning or end of the training period are not charged (27 Comp. Gen. 245). However, if the military orders expressly exclude the nonworkdays from the period or periods of military duty status, the nonworkdays are not charged to military leave (Comp. Gen. B 149951, Nov. 23, 1962).

b. 22-day law enforcement duty.

(1) An employee who has used the 22 days of additional leave provided may not be further excused from duty without loss of pay or charge to leave. The employee must be placed on annual leave or LWOP unless he or she has unused military leave for training duty that can be applied against the additional law enforcement duty (49 Comp. Gen. 233).

(2) Nonworkdays falling within a period of absence to provide military aid to enforce the law are not charged against the 22 days of leave allowed for this purpose.

(3) Employees called for law enforcement service may not elect to use, nor may they be involuntarily charged, annual leave or any other type of leave for periods of service in aid of law enforcement if any part of the 22 days allowable is still available for use, even to avoid forfeiting leave.

7. Using other leave during military duty.

a. Annual leave. Eligible employees, when called for a period of military duty beyond the 30- or 22-day period chargeable to military leave, may use annual leave and may receive civilian compensation concurrently with pay and allowances for active duty beyond the 30- or 22- day period (27 Comp. Gen. 245, 37 Comp. Gen. 255). An employee may not use or be charged annual leave if military leave is chargeable and is available (GAO Policy Concerning the Use of Military Leave - B209209-O.M., May 27, 1983). An employee may use annual leave for certain types of military training, such as ROTC field training, which is not considered active duty in the Armed Forces and is inappropriate for military leave (see par. 1f(l)).

b. Leave-without-pay. An eligible employee who has used up all military leave and who has used up or does not want to use annual leave may be carried in an LWOP status except in the case of extended LWOP (see 1c, above).

c. Administrative leave. Employees may not be authorized administrative leave to increase the number of days or hours they may be excused for active military or training duty or for law enforcement duty (49 Comp. Gen. 233).

8. Civilian and military service incompatible. Civilian active service is incompatible with military active duty status. An employee who is on active duty with a reserve component is not

regarded as present for work in a civilian position while serving on active duty with the military. Even if an employee reports for civilian work, his or her leave account must be charged with military or other leave for the days of active military duty. However, an employee may be credited for civilian work performed on the same day but before or after being subject to military control (Comp. Gen. B-211249, Sept. 20, 1983).

9. Pay status required.

a. Need for pay status. In general, a pay status either just before the beginning of military duty or a return to pay status just after is necessary before an employee may be granted military leave with pay; since, otherwise, no civilian pay would have been lost. However, the better test of whether an employee may be granted military leave should not be simply his or her nonpay or pay status just before or after military duty. Rather, it should be whether or not, but for the active duty, the employee would have been in a civilian pay status and therefore eligible. An important instance of LWOP not affecting entitlement to military leave occurs when the employee requests LWOP after receiving definite military orders to report on a specific date.

b. Relationship to annual leave before furlough. When an employee is on annual leave preceding a furlough-without-pay period before separation by reduction in force, and is called to military training duty, the military leave is regarded as interrupting his or her annual leave status. The employee can then return to annual leave status at the end of his or her military leave before the previously fixed termination date.

10. Effect on training period before promotion. Promotions conditioned upon successful completion of a training program are properly delayed by the amount of time during which participating employees are absent on military leave (Comp. Gen. B-189002, Feb. 8, 1978).

11. Examples of calculating and granting. The examples that follow illustrate how to calculate and grant military leave.

a. Example 1.

(1) Question: How is a new employee's military leave credited after a break in service, and how much military leave can be used when it overlaps fiscal years?

(2) Facts: Steve had 10 days of unused military leave when he resigned from a Federal agency in October. One year and 10 months later on August 18 he is given a full-time, permanent appointment with GSA and he requests 30 days of military leave for active duty training for the period during the next month from Wednesday, September 10 through Friday, October 10.

(3) Resolution: Since Steve is eligible to accrue military leave within the fiscal year after the fiscal year during which he was separated, the 10 days of unused military leave from the previous appointment are added to the 15 days of leave that accrue at the time of the present appointment. Steve's military leave extends into the next fiscal year, so that the remaining 5 days of military leave requested for the 30 days of military training are available and must be granted. Although he has an additional 10 days of military leave remaining, Steve cannot use more than the maximum 30 days without a return to work and new orders.

b. Example 2.

(1) Question: How much military leave should accrue to an employee who has a series of regularly scheduled tours of duty with hours that vary in successive biweekly periods, if the series of tours repeats cyclically?

(2) Facts: Betsy is a reservist and wants to know how much military leave she can use this year for active duty training. She has been employed on a part-time, permanent appointment for several years. She agreed with her supervisor to work a cyclical part-time schedule made up of a different number of hours for each of 7 regularly scheduled workweeks and then begin the same cycle again. The cycle will continue indefinitely. Betsy's hours of work for the 7 workweeks are 20, 25, 30, 35, 30, 25, and 20. She has 7 and 1/4 days of unused military leave left over from the last fiscal year and has not used any military leave yet this fiscal year.

(3) Resolution:

(a) Before applying the general accrual formula, the hours that Betsy worked within the cycle must be averaged as follows:  $(20 + 25 + 30 + 35 + 30 + 25 + 20)$  divided by  $7 = 26.429$  hours. The decimal fraction is rounded up to the third decimal place.

(b) Using the averaged hours per workweek as calculated above and the general accrual formula, Betsy's accrued military leave is:  $(26.429/40) \times 15 = 9.915$ .

(c) Decimal fractions are rounded off to eighths of a day. In this case the fraction of a day, .915, is closest to  $7/8$  (.875).

(d) Betsy accrues 9 and  $7/8$  days of military leave.

(e) Since she has used no military leave this year and has 7 and  $1/4$  days left from last year, Betsy can use up to 17 days of military leave during the current fiscal year working her current hours. The  $1/8$  day plus any other unused military leave carries over to the next fiscal year.

c. Example 3.

(1) Question. What military leave must be granted to an employee who changes the type of his appointment and says that he will resign without returning from military leave?

(2) Facts. Bill was given a full-time permanent appointment on September 25. He is new to the Federal Government and has not used any military leave. On October 10 he is converted to a part-time, permanent appointment and assigned a regularly scheduled tour of duty of 30 hours per week. Now, on October 15, Bill presents his supervisor with orders to report for reserve active duty for training from October 16 through November 10. At the same time, Bill notifies his supervisor that he plans on resigning effective November 10.

(3) Resolution.

(a) Although Bill will not return to work before the effective date of his resignation, he was in a pay status before his proposed military leave. Thus, it must be granted if he is otherwise eligible.

(b) Bill's accrued military leave is calculated as of the time of taking of leave, October 16. He has 15 days carryover military leave from the previous fiscal year ending September 30.

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- (c) The general formula used to calculate accrued military leave is: regularly scheduled hours divided by 40, multiplied by 15, minus current year used military leave, equals accrued military leave. Up to 15 days of carryover may be added to accrued leave.

(d) Bill's accrued military leave is: (30/40) X 15 0 = 11.25 days. The total available military leave becomes 26 days, since Bill has not used any of last fiscal year's military leave and the 1/4 of a day cannot be granted.

(e) Although Bill will not work for the Federal Government for the rest of the fiscal year, he has the right to use the entire 26 days of military leave.

(f) Although Bill did not apply for leave 2 weeks before his absence, the full 26 days of his military leave must be granted.

(g) The remaining 1/4 day would be credited to Bill's military leave account if he is an eligible employee at any time before the end of the next fiscal year.

d. Example 4.

- (1) Question: How much military leave can be granted to an employee is assigned an uncommon tour of duty and is ordered to active duty with the National Guard after a major disaster?

(2) Facts: Don works as a fire fighter with GSA on a full-time, permanent appointment. Working an uncommon tour of duty of 72 hours on duty and then 72 hours off duty, he averages 85 hours per week. Additional compensation on an annual basis for standby duty has been authorized for him. There is an earthquake in Don's State, and, as a reservist, he is called to active duty to assist the public during the aftermath. His military orders place him on active duty from 8 a.m., November 1 to 6 p.m., November 30. Don's 72-hour shift begins Monday, November 3 at 8 p.m.. He returns to work at GSA on Wednesday, December 3 at 8 a.m., but is called to active duty again from 8 a.m., December 22 to 6 p.m. on January 16, after another earthquake. Don's shift at GSA ends at 8 a.m., January 17.

(3) Resolution:

(a) Don is eligible for military leave under 5 U.S.C. 6323(b), which provides for 22 days of leave without loss of pay or other leave for each calendar year.

(b) Military leave under this statute must be charged on an hourly basis for the hours absent from work. For a 40-hour tour of duty with 8-hour days, 22 days of military leave equals 176 hours.

(c) Since Don is working an uncommon tour of duty which averages 85 hours, compared to a normal 40-hour tour, his maximum military leave under this statute is adjusted as follows: 176 X 85/40 = 374 hours.

(d) During the first period of military duty, Don is charged with 360 hours of military leave.

(e) He cannot use or be charged more than 374 hours of military leave under this statute during a calendar year. During the second period of military duty Don is absent for 120 hours in December. He must be charged with the remaining 14 hours of military leave entitled to him under 5 U.S.C. 6323(b). The remaining 106 hours of absence in December must be charged to available military leave accrued under 5 U.S.C. 6323(a), to available annual leave, or to LWOP.

(f) The 202 hours of absence in January are charged against the 374 hours of military leave available to Don beginning January 1.

(g) The period of 14 hours from 6 p.m., January 16, when Don is no longer on active military duty, to 8 a.m., January 17, when his shift ends, must be worked, charged to annual leave or charged to LWOP.

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- CHAPTER 7. FUNERAL LEAVE
1. General.

a. GSA employees are entitled to not more than 3 days of leave to make arrangements for, or attend the funeral or memorial service for, an immediate relative who died as a result of wounds, disease, or injury incurred while in service as a member of the Armed Forces in a combat zone. This time shall be granted without loss of or reduction in pay, leave to which he is otherwise entitled, credit for time or service, or performance or efficiency rating.

b. Armed Forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

c. Immediate relative means the following relatives of the deceased member of the Armed Forces:

(1) Spouse, and parents thereof;

(2) Children, including adopted children, and spouses thereof;



- (3) Parents;

(4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship.
- d. Funeral leave may be granted only to employees with a prescribed tour of duty.
- e. The 3 days of funeral leave need not be consecutive. However, if they are not, the employee shall furnish his supervisor with satisfactory reasons justifying the grant of funeral leave for non consecutive days.
2. Application and approval of funeral leave.
- a. Approval for funeral leave shall be obtained in advance from the employee's supervisor.
- b. Absences on funeral leave normally will be recorded by having the employee initial the GSA Form 856-B, Time and Attendance Record. The leave shall be recorded as time in pay status and as time absent under "Other, " with an appropriate explanation under "Remarks. "
- c. Employees who are not sufficiently near their supervisors or the person maintaining their GSA Form 856-B to apply for funeral leave in person must submit an SF 71, Application for Leave.
- d. Employees may be granted funeral leave for each instance in which the conditions in par. 1 are met.
3. Restriction.
- a. The requirement that leave be granted is limited strictly by the inclusion of the words ". . . in a combat zone (as determined by the President in accordance with section 112 of title 26), " thus excluding from coverage those deaths of servicemen which are incurred in the line of duty elsewhere in the world.
- b. 5 U. S. C. 6326(c) provides that the right of an agency to grant funeral leave does not affect its authority to excuse an employee from duty without charge to leave or loss in pay when it is in the public interest. Therefore, supervisors may continue to excuse employees, if desired, to attend the funeral of an immediate member of the family killed in the line of duty with the Armed Forces in an area of the world that is not designated as a combat zone.
- c. The excusing of veterans from duty to participate in military funerals is described in chap. 8-11.
- d. Employees may not be granted funeral leave or excused from duty without charge to leave or loss in pay in the case of the death of an immediate relative who was not a member of the Armed Forces who met death as described in a and b, above. In such cases, the employee must use annual leave or LWOP.

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CHAPTER 8. EXCUSED ABSENCE/ADMINISTRATIVE LEAVE

1. Definitions.

- a. Administrative leave is used to refer to an authorized absence from duty with pay and without charge to leave. It is virtually interchangeable with the term "excused absence." GSA's Payroll Information Processing System (PIPS) records both "other brief absence" and "administrative leave" with the same transaction code (84).
- b. Administrative dismissal is the release of employees without charge to annual leave or loss of pay when the normal operations of an establishment are interrupted by events beyond the control of management and employees, for instance snowstorm, power failure, or fire. (See ch. 9 for detailed information on administrative dismissals.)
- c. Administrative closing is the shutdown of an installation or facility before employees are scheduled to report and when the normal operations of an establishment are interrupted by events beyond the control of management and employees, for instance snowstorm, power failure, or fire. Employees may be directed to report elsewhere, may be put on furlough, or may be released from their obligation to report to work under a grant of administrative leave. (See ch. 9 for detailed information on administrative closings.)
- d. Delayed arrival policy is a temporary expansion of the authority of supervisors to excuse tardiness. It is usually declared in connection with hazardous weather, transit strikes, and the like. It allows supervisors to excuse up to 2 hours of tardiness. (See par. 4.)
- e. Excused absence is an administratively authorized or approved absence from duty without charge to leave or loss of pay. Excused absence is often used synonymously with the term "administrative leave."
- f. Liberal leave policy is a temporary relaxation of the normal requirement for employees to request leave in advance from their supervisors. It is usually declared in connection with hazardous weather, transit strikes, and the like. A single event like a snowstorm may lead to the declaration of both a delayed arrival/liberal leave policy (and may even lead to an administrative dismissal or closing), but either policy may be declared independently. (See ch. 1 and 9 for liberal leave policy.)
- g. Supervisor is used in this chapter in the general sense of the word. It does not necessarily mean first level supervisor or any other particular hierarchical management level. Check current delegations of authority to see whether a particular authority is held at a higher level than the first level of supervision.

2. General provisions.

- a. Although there is no general statutory authority under which employees may be excused from their official duties without loss of pay or charge to leave, the Office of Personnel Management and the Comptroller General have long recognized that agency heads may prescribe policies under which employees may be excused. (See Subchapter 11 in FPM Chapter 630 and in Book 630, FPM supplement 990-2 for further information.)
- b. In dealing with situations specifically addressed in this chapter, supervisors have considerable discretion in determining whether to excuse an employee, over the amount of time allowed, and in setting criteria for requests to be excused. Such supervisory discretion cannot override specific statutory or regulatory authority or GSA policy, as described in this chapter.
  - (1) Supervisors may refuse a specific request due to operational requirements, because the employee cannot be spared at the time or because of other pertinent considerations. GSA policy is to allow this discretion rather than to limit it unduly with explicit requirements on time allowed, documentation required, etc.
  - (2) Employees need their supervisor's approval prior to being excused. They may not simply take time off just because the absence would fall into one of the categories in this chapter.
  - (3) Supervisors, managers, and employees should operate with a strong presumption that the official time of Federal employees is best devoted to the duties of their positions. This presumption is reinforced by the body of Federal appropriations law, including the decisions of the Comptroller General of the United States.
- c. Certain officials are authorized to make basic decisions on the kind of situations, beyond those specifically addressed in this chapter, for which employees may be excused. Check current delegations of authority for the level at which such managerial discretion is lodged. Such managerial discretion cannot override specific statutory or other authority, as described in this chapter. For instance, specific legislative authority for administrative leave for military funerals precludes agencies from extending this to other funerals, such as those of friends and family members. Similarly, executive agencies may not grant administrative leave for reevaluation medical examinations required by the Department of Veteran's Affairs (DVA). The President, by Executive Order 5396, specifically required veterans undergoing periodic disability examinations at the Veterans Administration to take annual leave, sick leave, or leave without pay.
- d. Excused absences are accounted for in whole hours on GSA Form 3575, Time and Attendance Record. Periods of less than 1 hour are recorded on "cuff records." Specific information on recording excused absence are provided in Office of Finance handbooks and instructions on time keeping procedures. Instructions for recording official time for labor organization representational time is prescribed by pertinent labor-relations directives. (See par. 12.) These issuances should be consulted concerning questions about proper recording of employee time and attendance.
- e. Virtually all legitimate excused absence is for relatively short periods, in many cases only a few hours or a single workday. Hence excused absence to attend bar review courses of 14, 28, or 31 days was disallowed as contrary to the rule that excused absence is for short periods. (B-156287, February 5, 1975) (However, see par. 14 for an exception.)
- f. Excused absence up to 40 hours is allowed for civil defense activities. Excused absence for daily, hourly, or piecework employees is generally not allowed to exceed 3 days. (5 CFR 610.302)
- g. Wage system employees who meet the following conditions are excused in the same manner and for the same reasons as General Schedule employees who have regular tours of duty. (5 CFR 610.301 et seq.).
  - (1) A regularly scheduled tour of duty;
  - (2) Appointment not limited to 90 days or less; or
  - (3) Employed currently for a continuous period of 90 days under one or more appointments without a break in service.

3. Brief absence and tardiness.

- a. Brief absence from duty of less than 1 hour and tardiness may be excused when reasons appear to be adequate to the supervisor (see ch. 1-17).

b. Otherwise brief absences or tardiness may be compensated for by additional work or may be charged against any compensatory time the employee may have to his or her credit, or may be charged to annual leave, LWOP (with the employee's consent), or absence without leave (AWOL).

c. Daylight savings time. In the spring, the change from standard to daylight savings time can make a daily tour of duty which is nominally 8 hours long into one 7 actual hours long. In the fall, the change back from daylight savings time to standard time can make a daily tour of duty which is nominally 8 hours long into one 9 actual hours long. For instance, an employee normally works a shift from 11 p.m. to 7 a.m. At 1 a.m. on the first Sunday in April, clocks advance 1 hour to 2 a.m. Hence the employee's shift actually covers only 7 hours. Conversely in October, when clocks are set back 1 hour the employee's shift actually covers 9 hours.

(1) Without some adjustment of work schedules, employees who work the night shift on the first Sunday in April when clocks are set ahead for daylight savings time would actually work only 7 hours of their normal 8 hour shift. If there is work for them to do, the supervisor should schedule them to work a full 8 hours, by adding an hour of actual work at either end of the shift. For instance, the supervisor can establish the employee's basic daily tour of duty for that shift as either 10 p.m. to 7 a.m. - 8 hours or 11 p.m. to 8 a.m. - 8 hours. The night shift would then overlap with either the shift before or the shift after. The fact that overlapping shifts are not practical in a particular situation (e.g., a 1-person post) does not mean that one of the employees may be excused without charge to leave. Supervisors may not grant 1 hour of administrative leave at the end of the shift to fulfill the requirement that the employee actually works 8 hours. Instead the absence must be charged to annual leave, compensatory time, or LWOP. (57 Comp. Gen. 429 (1978)) (See ch. 12 for procedures on establishing workweeks and tours of duty.)

(2) Conversely in the fall when clocks are set back one hour, supervisors should schedule employees for a daily tour of duty 9 hours long including 1 hour of regular overtime. For instance, the employee's normal basic daily tour of duty from 11 p.m. to 7 a.m. would actually cover 9 hours when clocks are set back. The final hour counts as regular overtime. Alternatively supervisors can adjust work schedules so that the employee on duty when clocks turn back actually works only 8 hours. In that case employee on the earlier or later shift would have to work regular overtime to provide coverage.

d. Day care visits. In general visits by parents to day-care centers at or near the work site may not be excused without charge to leave or loss of pay. However, employees covered by negotiated agreements that provide for paid rest periods (breaks) may use that time (and/or their meal periods) for such visits. Note that paid breaks (e.g., 15 minutes in the morning and 15 in the afternoon) may not be combined into a single absence (e.g., 1 half-hour), nor may paid breaks be combined with the unpaid meal period.

(1) As an exception to the general rule, supervisors may excuse mothers who are breast-feeding their infants at a day care center on-site.

(2) For emergencies, supervisors should be flexible in granting annual leave, LWOP, or sick leave but may not otherwise excuse the employee to care for the child. A parent may take sick leave only when the child is ill with a contagious disease and the parent must provide personal care and attendance. (See ch. 3 sick leave.)

#### 4. Delayed arrival policy (hazardous weather).

a. After an official declaration of a delayed arrival policy (by reason of hazardous weather conditions, transit strikes etc.), supervisors may excuse tardiness without charge to leave or loss of pay, up to 2 hours.

b. Tardiness over 2 hours because of unavoidable delay due to bad weather or disruption of public or private transportation may be excused by Heads of Central Office Services and Staff Offices and by Regional Administrators in cases they personally review and approve. Check current delegations of authority to see whether this authority can be or has been re-delegated.

c. In rare cases, employees who did not actually report for duty during hazardous weather, may be excused for up to their basic daily tour of duty (but not for either regular overtime or irregular or occasional overtime scheduled for that tour of duty). This may be done only on the authority of the Head of the Central Office Service or Staff Office or the Regional Administrator after he/she determines, after personal review of the facts, that the employee made every reasonable effort to get to work but was unable to do so because of weather conditions. Determining factors in this decision include:

(1) Conditions generally prevailing in the immediate area where the employee resides and through which he/she would have been required to travel and the success other similarly situated employees had in being able to report for work;

(2) The distance between the employee's residence and place of work;

(3) The mode of transportation normally used; and

(4) Efforts made by the employee to get to work.

d. Flextime. For employees on flextime, the amount of excused absence is based on the fixed tour of duty. Employees on other kinds of flextime schedules (gliding, variable day, variable week, or maxiflex schedules) may vary their starting and stopping times daily as well as their number of hours. Hence a method is needed for determining the amount of excused absence. In GSA, the point of reference for determining the amount of excused absence is the official hours of work or, for someone on an uncommon tour of duty, the former fixed hours of work. AWS programs must not provide for granting excused absence based on individual daily work patterns such as constant pattern of arrival, predominant pattern of arrival, or variable pattern of arrival. (See ch. 12-7d for a complete description of time and attendance provisions of flextime programs.)

#### 5. Blood donations.

a. There is a continuing need to encourage donations of blood for Red Cross (or similar organization) and hospital blood banks.

b. Employees who donate blood without compensation will be excused during duty hours for the time necessary but not more than 4 hours. Time off over 4 hours must be charged to leave. Normally the total time is much less than 4 hours. Employees are supposed to report back to work unless they feel faint. Record time for blood donation as "administrative leave."

#### 6. Registration and voting.

a. Insofar as practical without interfering seriously with operations, employees who desire to vote or register in any election or in referendums on a civic matter in their community will be excused for a reasonable time for that purpose. Employees must obtain their supervisor's approval in advance for absence for voting and registration periods established by the jurisdiction in which they will vote.

b. As a general rule, if the polls are not open at least 3 hours before or 3 hours after the employee's regular hours of duty, he/she may be granted an amount of excused absence which will permit him/her to report for work 3 hours after the polls open or leave 3 hours before the polls close, whichever requires the lesser amount of time off.

Example. Tour of duty: 8 a.m. to 4:30 p.m.

Poll hours: 6 a.m. to 7 p.m.

In this example, the polls open 2 hours before the employee reports for duty and close 2 1/2 hours after his/her tour of duty ends. The employee would be excused from duty at 4:00 p.m. which will give him 3 hours before the polls close.

c. Employees on flextime. For those on flextime, the amount of excused absence is based on the fixed tour of duty. For those on gliding, variable day, variable week, or maxiflex schedules, the point of reference is the official hours of work in the installation or, for those on an uncommon tour, the former fixed hours of work. See ch. 12-7d. for flexible work schedules generally and the definitions of the terms above.

d. Under exceptional circumstances, where the general rule does not permit sufficient time, an employee may be excused for such additional time as may be needed to enable him/her to vote, depending upon the particular circumstances in the individual case, but not to exceed a full day.

e. If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted sufficient time off to be able to make the trip to the voting place to cast his/her ballot. Where more than 1 day is required to make the trip, a liberal policy shall be observed in granting the necessary leave for this purpose. Time off in excess of 1 day shall be charged to annual leave or, if annual leave is exhausted, to LWOP.

f. For employees who vote in jurisdictions which require registration in person, time off to register may be granted on substantially the same basis as for voting, except that no time shall be granted if registration can be accomplished on a nonworkday and the place of registration is within reasonable 1 day round-trip travel distance from the employee's place of residence.

#### 7. Training.

a. Government-sponsored. When, under the GSA training program, employees are sent to, or allowed to attend courses of instruction, lectures, seminars, SLIC training, or user group meetings, etc. they are considered to be on official duty during their normal work hours. Overtime pay for training purposes is usually prohibited. For the exceptions see ch. 12-4e. Government sponsored training includes work related correspondence courses that the employee works on during duty hours with the approval of the supervisor. Professional development activity is also covered.

b. Un-sponsored training. An employee may not be excused for periods of unsponsored training, that is training not carried out under the Government Employees Training Act. Unsponsored training is not part of an employee's official duties. (But see subpar. 9c. for policy on time for professional examinations) Instead of excused absence, supervisors may, at their discretion, accommodate employees who wish to take unsponsored training by adjusting their work schedules to enable them to take courses on their own time. (See ch. 12-3b.)

#### 8. Conferences, conventions, and meetings.

a. Employees may be excused without charge to leave to attend conferences, conventions, or professional meetings at which the subject matter is related to their functions and some benefit is expected for GSA or the Government as a whole. Generally such activities are considered duty time; when the absence is not specifically connected with the duties of the employee's position, it may be recorded as administrative leave. For instance, supervisors may grant up to 1 hour per week of administrative leave for employees to participate in meetings of Toastmasters International.

b. Employees may be excused to attend meetings even though travel at Government expense is not approved. However, the period of authorized absence without charge to leave for travel at the employee's expense will not exceed the time for which per diem would have been paid had travel been authorized at Government expense.

c. Employees who are board members or officials of employee recreation associations or employee credit unions may be excused a reasonable amount of time to attend meetings of their governing boards or management. Supervisors may grant up to 2 hours administrative leave for this purpose.

#### 9. Examinations and interviews.

a. Civil service examinations. Employees required to take civil service examinations in connection with a pending placement action within GSA must be excused without charge to leave for the time necessary for this purpose. This is considered duty time. When employees take open competitive civil service examinations on their own initiative, their absence may be charged to leave.

b. GSA internal placement. Employees required to report for placement interviews or examinations in connection with placement in GSA must be excused for the time involved when such matters are conducted during the employee's regular work hours.

##### c. Professional examinations.

(1) When passing a professional examination in a condition of employment, supervisors must excuse the employee. This is considered official time and not recorded as administrative leave/excused absence. For instance, as a condition of appointment to the position of Attorney, a Law Clerk, GS-904, must pass the bar examination. However, such employees may not be excused for bar review courses. (See subpar. 7b(1).)

(2) Although not necessarily required by qualification standards, many other employees are encouraged to take examinations for architect or engineer licenses, admission to the bar (when not a condition of employment), CPA certificates, and other professional accreditation. Supervisors at their discretion may excuse employees for no more than 3 days for these examinations.

##### d. External placement interviews.

(1) When an employee's competitive area is undergoing a RIF, supervisors at their discretion may grant excused absence for job placement interviews to employees who have received either a general or specific RIF notice. Such interviews may be for a position in another Federal agency or outside the Federal government. Requests by employees for excused absence should include appropriate supporting documentation. (Placement interviews for jobs within GSA are covered by subpar. 9b, above.)

(2) Employees who have not received either a general or a specific RIF notice may not be granted excused absence for job placement interviews for positions in other Federal agencies or outside the Federal Government, even though their competitive area may be undergoing a RIF.

10. Health.

a. Duty-connected injury or illness. An employee who sustains a disabling, job-related, traumatic injury or an occupational disease or illness may be excused from duty without charge to leave or loss of pay for up to their basic daily tour of duty on the day the disability begins. The absence on the day of injury is considered regular hours and is not accounted for as administrative leave/excused absence. Subsequent time off may be accounted for as continuation of pay (COP), LWOP, or sick leave, as described in ch. 10. The 45-day period for continuation of pay (COP) begins the next work day. On the day of injury there is no charge against the 45-day period.

b. Medical examination and treatment. Employees who are examined or treated in Public Health Service facilities for illness or minor nonduty-connected injury, or who are ordered for GSA employment or Civil Service medical examinations, vaccinations, X-rays, etc., or who are authorized to participate in any GSA or civic health or immunization programs, will be excused without charge to leave for the time necessary to be examined, treated, or vaccinated. This is considered duty time and not administrative leave/excused absence. This authority to excuse employees for medical examinations or treatment is limited to brief periods, usually not to exceed 1 day.

c. Armed Forces physical examinations. Employees will be excused without charge to leave, not to exceed 1 day, to obtain physical examinations to determine fitness for entry on extended active duty or assignment to active duty with the Armed Forces, or to determine qualifications for retention in reserve components provided no military pay is received for the period.

d. Physical fitness. The benefits of regular exercise are undeniable. GSA recognizes the contribution of physical fitness to overall health and supports physical fitness programs. However, GSA's policy is that excused absence may not be granted routinely for participation in physical fitness programs. Employees may not be excused from duty to work out at physical fitness facilities even when the facilities are on the premises and are sponsored by employee recreation associations or similar organizations. Likewise they may not be excused regularly for running, jogging, or similar pursuits intended to maintain overall physical fitness and health. Employees may not be excused to participate in footraces or team sports whether in their personal capacities or as representatives of their agency or the nation including competitions in the Olympics or the PanAmerican Games. (B-185128, December 3, 1975) When physical fitness training is required and is conducted under the Government Employees Training Act then the time spent is official duty. (See par. 7.)

11. Labor organization representation.

a. The Civil Service Reform Act of 1978 (at 5 U.S.C. 7131) provides for granting official time to employees representing labor organizations to perform their representational duties. These include negotiating, time spent before the Federal Labor Relations Authority, and other representational functions. The employee's representative may be authorized official time only for periods during which he or she would otherwise be in a duty status. Official time may not be used to perform internal union business.

(1) Supervisors should follow the guidance in ch. 7, "Official Time for Union Representatives" in the HB, Labor Relations (EPA P 9711.2) and in doubtful cases should consult with their labor relations specialist. This is an area of labor law that can change rapidly.

(2) Official time for union representation must be recorded on GSA Form 3079, Record of Official Time for Representational Functions, as provided by the Labor Relations HB. Official time should also be recorded on GSA Form 3575, Time and Attendance Record, as provided in directives of the Office of Finance.

12. Official consultations. Employees may visit a GSA personnel office, Employee Counseling Service Program counselor, administrative support office, finance office, etc. without charge to annual leave to consult GSA officials on their duties, working conditions, employment status, pay and like matters. Employees must have their supervisor's prior approval for their absence from their work site. This time is usually considered official duty.

a. Since many of these consultations involve personal or confidential matters, supervisors must respect employee privacy about the exact reason for the visit. Supervisors must make suitable arrangements to allow employees a reasonable amount of time off for such consultations when the office the employee intends to visit is within a reasonable distance of the work site.

b. Many work sites are not within a reasonable distance of the personnel office, etc. However, most employees in such locations have ready access to a phone and may call from their desks while on duty. In warehouses or other locations, the employee may not have ready access to a phone from which to call. Supervisors must make suitable arrangements to allow employees a reasonable amount of time to use a phone for such consultations.

13. Appeals, hearings and grievances.

a. GSA employees required or authorized to be present at hearings or boards will be excused from normal duties without charge to leave for that purpose. This is considered official duty. Such absences include those for hearings within GSA and at the Merit System Protection Board, Special Counsel, Federal Labor Relations Authority, OPM and similar bodies. However, the supervisor should take into consideration the complexity of the case and length of the charges or hearing record in determining what may be considered a reasonable amount of time for this purpose.

b. The supervisor, with the advice of the Central Office or Regional Personnel Officer, shall grant the employee and his/her designated representative, if he/she is a GSA employee, a reasonable amount of time during regular working hours without charge to leave for preparation of an appeal to the Merit System Protection Board. Generally, 1 day will be sufficient for any of these absences.

c. Employees have the use of official time to present grievances under the agency grievance procedure or the negotiated grievance procedure whichever is applicable. Preparation time for grievances is subject to special rules. (See the directives or contracts governing those procedures.) This is all official time, not administrative leave.

14. Adverse actions.

a. Sometimes employees are placed in a non-duty with pay status in connection with an adverse action under Part 752, but only as a final alternative to other options (see 5 CFR 752.404(b)(3)). This non-duty with pay status is recorded as administrative leave. For information on adverse actions, refer to agency directives that prescribe adverse action policy and procedures, to delegations of authority, and to negotiated agreements. Supervisors should also consult their employee relations specialist and/or labor relations specialist. The details of such matters are beyond the scope of this HB.

15. Relocation. Employees may be excused in connection with a transfer (permanent change of duty station) done for the convenience of the Government.

a. For a house-hunting trip, the employee may be excused for one round-trip, up to 10 calendar days including travel time. Time for house-hunting is duty time. (B-203196, February 3, 1982)

b. For packing and unpacking household goods, employees will usually be granted 2 days to pack and 1 day to unpack, but for sufficient reason supervisors may grant up to 5 days of excused absence. This time must be reported as "administrative leave."

c. For a visit by an appraiser in connection with GSA's guaranteed home sale program, employees may be granted up to 2 days of excused absence. This counts against the 5 day limit in subpar. b above. This time must be reported as "administrative leave."

d. Time for the relocation travel itself is duty time. For travel days falling within their basic workweeks, employees may be excused for relocation travel up to the number of days covered by their per diem travel allowances. (For rules on per diem, see FTR CH 2-4.1.)

16. Rest period in connection with travel.

a. Under Federal Travel Regulations, employees taking long trips outside the conterminous United States may be authorized rest stops and per diem. (See FTR CH 6-2.5) Excused absence may be granted when the time for the rest stop falls within the employee's regularly scheduled administrative workweek. Rest periods are not compensable if they fall outside the employee's regularly scheduled administrative workweek. (See ch. 12-3d, ch. 12-4, and ch. 12-5 for rules on compensatory time for travel time outside duty hours.) Also see PFM P. 4290.1 regarding GSA internal policy on rest stops and per diem payments.

b. Employees may also be authorized a rest period after arrival at the destination in certain circumstances. The Fly America Act may require travel by U.S. Air carrier during nonduty hours, even though an employee could have traveled during regular duty hours aboard a foreign flag carrier. When travel by U.S. air carrier requires boarding or deplaning between the hours of midnight and 6 a.m. (for the time zone where the travel originates) an employee may be granted a brief period of administrative leave (and additional per diem, if appropriate) at his or her destination. (56 Comp. Gen. 629 (1977)) In one case, the Comptroller General ruled that a grant of administrative leave to an employee for an acclimatization rest after he completed a full day of duty and traveled over 7 hours by air on his return from Guam to Honolulu is a proper exercise of administrative discretion. (55 Comp. Gen. 510 (1975))

17. Religious holidays. Employees will not be granted excused absence to attend religious services or to observe a holiday of their faith. Supervisors may grant compensatory time off for religious observances under 5 U.S.C. 5550. (See ch. 12-3a.) Supervisors may also adjust work schedules to accommodate employees whenever this does not seriously interfere with operations. They may also grant annual leave or LWOP for this purpose.

18. Parades and ceremonies. Employees may be excused to attend officially authorized parades and ceremonies, for instance, welcoming ceremonies for foreign dignitaries at the White House, consistent with prevailing practice among all Federal agencies in the local area. Record the time as "other paid absence." However, employees in a leave status immediately before or afterwards will be charged leave for the entire period of absence.

19. Military funerals. Veterans may be excused for up to 4 hours in any single day for certain military funerals when it will not interfere with the efficiency of their organization. This applies to veterans of a war, campaign, or expedition for which a campaign badge has been authorized, and to members of honor or ceremonial groups in organizations of such veterans. They may be excused from duty without charge to leave or loss of pay to participate as active pallbearers or as members of firing squads or guards of honor in funeral ceremonies for a member of the Armed Forces of the United States whose remains are returned from abroad for final interment in the United States. (5 U.S.C. 6321)

20. Military enlistment or registration for the draft.

a. Employees who are enlisting in the Armed Forces will be excused without charge to leave or loss of pay for such part or all of the day as may be required. If more than 8 hours are required, the absence over 8 hours must be charged to annual leave or LWOP. A request must be supported by an official notification from the military component. Record the absence as "other paid absence."

b. Employees who need to register for the draft can register with a post card easily obtained from any post office. Employees may not be granted excused absence for this purpose.

21. Civil defense and disaster activities.

a. GSA programs. Employees required to be absent from their normal duties because of planning, training, or other similar responsibilities in GSA's disaster and civil defense program will be considered as being in an official duty status.

b. Community programs.

(1) Supervisors may authorize employees who have volunteered and been selected for civil defense assignments to participate in pre-emergency training programs and test exercises conducted by any State or local civil defense organization. The total of such absences may not exceed 40 working hours in any calendar year.

(2) Absences in excess of 40 working hours in any one year must be charged to annual leave or LWOP.

(3) Each employee must notify his/her immediate supervisor of any such anticipated absence and must submit evidence from State or local civil defense authorities that he/she participated in the programs and exercises.

c. State Guard or Civil Air Patrol.

(1) Employees called by State or local authorities to emergency duty for protective or rescue work in any State Guard or Civil Air Patrol must be excused by their supervisors without charge to leave for such duty for a period of not more than 3 workdays for any one incident. A State Guard is any State military organization not a part of the National Guard.

(2) Absences of 4 to 5 workdays must be approved by the Head of the Central Office or Regional Service or Staff Office.

(3) Absences over 5 workdays for one incident must be charged to annual leave or to LWOP, whichever the employee elects.

22. Volunteerism.

a. Scheduling work and time off.

(1) As a general rule, the Federal personnel system provides agencies with considerable flexibility in scheduling hours of work and time off. Supervisors are encouraged to make appropriate use of these flexibilities in responding to requests for changes in work schedules or time off to allow employees to engage in volunteer activities, while giving due consideration to the effect of the employee's absence or change in duty schedule on work operations and productivity.

(2) While supervisors may encourage employees to become more involved in volunteer activities, employees may not be coerced into doing so. 5 CFR 2635.705 of the Government wide Standards of Ethical Conduct for Employees of the Executive Branch prohibits supervisors from coercing employees to participate in outside activities and coercing employees to use official time to perform activities other than those required in the performance of official duties.

(3) It is generally inappropriate for a Federal agency to pay an employee for hours spent participating in volunteer activities. Under the necessary expense rule in appropriations law, funds must be spent for the purpose for which Congress appropriated the funds. Consequently, each employee's salary must be expended to carry out the purpose of the particular congressional appropriation from which the salary expense is ultimately drawn. Since there are no appropriated funds designated for volunteer activities, funds may not be expended to pay government employee's salaries for this purpose. Employees must take leave to participate in volunteer activities during official work hours. This rule also applies to industrially funded salaries.

(4) Under limited circumstances, however, it may be appropriate to excuse employees from duty for brief periods of time without charge to leave or loss of pay to participate in volunteer activities. The Office of Personnel Management has determined that such grants of administrative leave should be limited to one or more of the following situations:

- (a) The volunteer service is directly related to the department or agency's mission.
- (b) The volunteer service is officially sponsored or sanctioned by the head of the department or agency.
- (c) The volunteer service will clearly enhance the professional development or skills of the employee in his or her current position.
- (d) The absence is brief and is determined to be in the interest of the agency.

b. Authority. GSA employees may be granted excused absence to participate in volunteer activities in support of the President's "USA Freedom Corps" initiative. The USA Freedom Corps website (<http://www.usafreedomcorps.gov>) has been established to serve as a clearinghouse of information for citizens, including federal employees, seeking opportunities to volunteer. Volunteer activities identified through this website may be considered appropriate for an employee of GSA to participate in while on excused absence from the agency. GSA's Volunteer website also provides current agency information <http://insite.gsa.gov/gsavol/>

(1) The decision to grant excused absence to allow participation in a volunteer activity must be approved by Heads of Services, Staff Offices and Regional Administrators or their designees.

(2) Employees may normally be excused for short periods of time, normally 1 hour a week. Heads of Services and Staff Offices and Regional Administrators or their designees should limit total excused absence for their workforce during the year and may establish local policy on the use of excused absence for volunteer service, not to exceed the limits established herein. These are maximums, not targets.

(a) Limit excused absence for **workforce to a total of 1 percent** of work hours during leave year.

(b) Limit for individual is normally 1 hour a week not to exceed 52 hours in a leave year. In unusual circumstances and with the approval of Heads of Services and Staff Offices and/or Regional Administration may grant an individual exception. The maximum an individual may be allowed is 80 hours in leave year.

— (3) Excused absences should be documented on time and attendance records as "other excused absence/volunteer code 80."

(4) The volunteer service for which an employee is excused must be performed during the employee's scheduled work hours (i.e., his/her basic workweek

(5) An employee may not be excused from work as compensation for time spent during non-work hours (e.g., weekends, evenings) on volunteer activities. Compensatory time may not be granted for volunteer activities.

(6) Supervisors may not establish or change an employee's daily tour of duty to encompass a period of volunteer service to qualify it for excused absence. Under 5 CFR 610.121, agencies must establish and change work schedules in accordance with the actual work requirements of each employee.

(7) Heads of Services and Staff Offices and Regional Administrators or their designees may waive the 52-hour limit on a case-by-case basis. No exception will be approved to allow more than 80 hours as an individual limit during a leave year.

c. Recognition and Awards. While GSA strongly encourages our employees to participate in volunteer work, providing cash or time off for volunteer work is prohibited. Managers are asked to use letters of appreciation and other citations such as certificates of recognition to encourage, thank and support employees who perform volunteer work to make their communities a better place to live and/or for their contribution to the well being of others.

d. Responsibilities.

(1) It is the responsibility of Heads of Services, Staff Offices and Regional Administrators or their designees to administer GSA's volunteer program and to balance support for employees' volunteer activities with the need to ensure that employees' work requirements are fulfilled and that agency operations are conducted efficiently and effectively. In keeping with the call to community service, GSA's management officials should in support of the President's initiative.

(2) Human Resource Offices are responsible for providing advice, guidance and responding to all reporting requirements when necessary.

e. Other. The guidance in this subchapter is limited to the subject of excused absence for participating in approved volunteer activities. There are many other issues related to volunteer service that are beyond the scope of this guidance. Contact your servicing Human Resources Office or Office of General Counsel, for guidance on matters not covered in this guidance such as:

- (1) The necessity to avoid conflicts of interest, coercion, favoritism, involvement in partisan politics, or other breaches of ethical standards.
- (2) The prohibitions on fund raising outside the scope of the Combined Federal Campaign.
- (3) The potential liability issues related to employee participation in volunteer activities.
- (4) The propriety of anything more than nominal use of GSA resources in support of volunteer activities

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## CHAPTER 9. ADMINISTRATIVE DISMISSALS AND CLOSINGS

1. General.a. Definitions.

(1) Administrative dismissal is the release, by administrative order, of employees already at their work site without charge to annual leave or loss of pay when normal operations are interrupted by events beyond the control of management and employees, for instance snowstorm, power failure, or fire.

(2) Administrative closing is the shutdown, by administrative order, of an installation or facility before employees are scheduled to report and when normal operations are interrupted by events (usually) beyond the control of management and employees, for instance snowstorm, power failure, or fire. Employees may be told to report elsewhere, may be put on furlough, or may be granted administrative leave. Emergencies cause most closings, but managers may sometimes foresee and plan for other closings, e.g. for local holidays.

(3) Administrative order means an order from an authorized official relieving employees from active duty without charge to leave or loss of pay. An administrative order may be issued outside the formal GSA directives system, for instance as a memorandum. Check delegations of authority to see who is authorized to close facilities and dismiss employees.

(4) Delayed arrival policy means Federal offices are open as usual and employees are expected to report to work on time, but reasonable tardiness for commuting delays will be excused. A declaration of a delayed arrival policy allows supervisors to excuse up to 2 hours of tardiness instead of only 1 hour. A delayed arrival policy is usually declared in connection with hazardous weather, transit strikes, and the like. Media announcements will not necessarily use this term.

(5) An essential employee is one designated to report to, or remain at work in emergency situations to protect life, safety, health, or property. Dismissal or closure announcements do not apply to essential employees. They must report to or remain at work.

(6) An excepted employee is one designated as essential during a lapse of appropriations.

(7) A furlough places one or more employees in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(8) Liberal leave policy means Federal agencies are open; employees may take leave without prior approval. Nonessential employees who are prevented from reporting to work because of emergency conditions, or who could expect to have difficulty returning home if they report for work, may take annual leave or LWOP without advance approval. They should still advise their supervisors by telephone of their leave plans and whether or not they will be at work later in the day. A liberal leave policy allows employees to take annual leave or compensatory time without having scheduled it ahead of time, as they normally must do. It is usually declared in connection with hazardous weather, transit strikes, and the like. Media announcements will not necessarily use this informal term.

(9) Regular employees means permanent and temporary employees paid at daily, hourly, or piecework rates who have a regular tour of duty, and whose appointments are not limited to 90 days or less or who have been currently employed for a continuous period of 90 days under one or more appointments without a break in service. Intermittent employees, experts, and consultants are not included. Time and leave administration during dismissals and closings is different for those who are not regular employees.

(10) Supervisor is used in this chapter in the general sense of the word. It does not necessarily mean first level supervisor or any other particular hierarchical management level. Check-current delegations of authority to see whether a particular authority is held at a higher level than the first level of supervision.

b. Depending on the reason for the dismissal or closing, certain essential or excepted employees may be required to report to work, despite the closing, or to stay on, despite the dismissal. (See par. 6.)

c. By GSA policy, the same set of rules on leave and pay administration applies to regular employees (as defined in subpar. 1a(9)) and to those on an annual salary with an established work schedule. These rules do not apply to intermittent employees, experts, and consultants. Intermittent employees do not have an established work schedule from which they could be excused. When offices and activities are closed before the beginning of the workday, intermittent employees will not be paid for that day. When other employees are dismissed, intermittents may not be paid for the period from the time of dismissal to the end of the workday. Experts and consultants are also not paid when dismissed or when offices are closed.

2. Reasons for closings and dismissals.

a. The closing of an activity for brief periods is within the general administrative authority of an agency. Additionally, there is statutory authority under 5 U.S.C. 6104 to relieve regular



employees (but not intermittents, experts, or consultants) from work with pay by administrative order. These authorities cover all but closings and dismissals due to a lapse of appropriations. When funds run out, closings and dismissals are required by Federal appropriations law to avoid violating the Anti-Deficiency Act. This subject is covered separately in par. 8

b. All employees are to assume, unless otherwise notified, that their office or activity will be open each regular workday regardless of any weather or other emergency conditions which may develop. Employees should be prepared to cope with difficult driving conditions and minor disruptions of public transportation. However, emergencies sometimes arise that are beyond the control of management or employees and that prevent the opening of Federal offices and activities, or keep employees from getting to work, or make it necessary to dismiss employees early in certain areas.

(1) When a dismissal or closing becomes necessary, coordination with other Federal agencies and activities in the affected area is important. Uncoordinated group dismissals by agencies in an area can aggravate traffic congestion and hurt morale. Field activities should draw up contingency plans in cooperation with local government and Federal Executive Boards, as appropriate. The three essential elements in any local plan of action are an official determination that an emergency exists, a decision on the impact of the condition on the Federal employee population, and dissemination of instructions to employees. For detailed guidelines on developing local plans see Appendix A to Book 610, FPM Supplement 990-2.

(2) In the Washington, DC area, the concentration of Federal employees is so great that the Office of Personnel Management has established specific procedures – the residential zone dismissal plan – in cooperation with the metropolitan area Council of Governments. The plan affects employees according to where they live, not where or for whom they work. Employees whose homes are most distant from the city center will go home first. This approach addresses cross agency car pooling, something not properly considered in previous plans where employees were dismissed agency by agency. (See par. 7.)

(3) Provisions of negotiated agreements governing dismissals and closings may differ from the policy described in this chapter. Nothing in it is intended to override provisions of negotiated agreements. In case of conflict, follow the applicable negotiated agreement for bargaining unit employees and the advice of your labor relations officer.

c. Interruption of normal operations by an event beyond the control of management or of employees, such as extreme weather, fire, flood, or serious interruption of public transportation services.

d. Short term closings directed by management because of power failure, breakdown of machines, depleted or inadequate fuel reserves, or for rebuilding.

e. Shutdown for a local holiday when Federal work may not properly be performed, when employees of the office are actually prevented from working by one of the following circumstances:

(1) The building or office in which the employees work is physically closed, or building services essential to proper performance of work are not operating;

(2) Local transportation services are discontinued or interrupted so badly that employees are prevented from reporting to their work locations; and

(3) The duties of the employees consist largely or entirely of dealing directly with employees and officials of business or industrial establishments or local government offices and all such establishments are closed in observance of the holiday, and there are no other duties (consistent with their normal duties) to which the employees can be assigned on the holiday.

(4) These criteria should be construed strictly. Widespread observance of the holiday or participation by the local populace, by itself, does not meet the criteria. For instance, neither Mardi Gras in New Orleans nor St. Patrick's Day in New York City are local holidays for this purpose.

(5) Closings for local holidays are not Federal holidays for pay, time, and leave administration. Absences on such days are charged to administrative leave. Sometimes, even in the face of a general disruption for a local holiday, some employees are required to work; their time is not considered holiday work and does not qualify for holiday pay.

f. A single event like a snowstorm may lead to the declaration of either or both a delayed arrival and liberal leave policy and/or to an administrative dismissal or closing. Any of these may be declared independently.

g. Hot or cold working conditions will rarely cause a dismissal or closing. Previous guidance on hot or cold working conditions, especially the table of humidity and temperature equivalents, is obsolete. The original guidance was developed in 1948 before air-conditioning in offices became commonplace. Revised OPM guidance assumes that weather conditions are no longer likely to cause problems at offices or activities -summer or winter – unless there is a prolonged breakdown of essential building services.

(1) GSA policy reflects the assumption that dismissals due to temporary disruption of air cooling or heating. Systems should be rare; that employees are expected to tolerate minor discomforts due to abnormal conditions; and that individuals who do not wish to tolerate unusual temperatures may be granted annual leave.

(2) If an employee believes that extreme temperatures would endanger his/her health, the supervisor should send the employee to the local health unit for consultation. Based on advice from the health unit, the supervisor may grant annual or sick leave or, in rare instances, administrative leave to individual employees when the supervisors can reasonably conclude that extreme temperatures have or will incapacitate individual employees for duty or that conditions would adversely affect their health. When a health unit is not available, supervisors must make their decision on the best available evidence.

(3) If conditions are so serious as to actually prevent employees from working, they may be dismissed as a group and placed on administrative leave. This should occur rarely and only in extreme situations. Moreover, only affected groups should be dismissed. Dismissing one group does not require dismissing another unaffected group on grounds of equal treatment.

h. A lapse in appropriations when funding authority runs out for the Government as a whole or for GSA activities. (See par. 7 for the special rules in these situations.)

### 3. Dismissals.

a. Reasons for dismissal. Sudden, unplanned suspension or curtailment of operations may become necessary because of major flooding, massive power failure, extensive fire damage to buildings, serious interruptions to public transportation, depletion of fuel reserves, and similar major emergencies. Employees involved may, as a group, be dismissed and placed on administrative leave, for brief periods, up to 5 calendar days, without charge to leave or loss of pay. The Associate Administrator for Administration and Regional Administrators have been delegated authority to close GSA facilities and to release employees.

b. Furlough. Emergency shutdowns that would (or may) last more than 5 calendar days must be processed as short-notice or no-notice furloughs, depending on circumstances. Any shutdown for more than 5 days should be discussed first with the operating personnel office and the Director of Personnel.

c. Essential employees in critical positions. Certain critical functions relating to protection of life, safety, health, or property must be carried out even though most employees are

excused for all or part of a day or for the period of the emergency. Heads of Central Office Services and Staff offices and Regional Administrators (HSSO's/RA's) must identify employees who carry out these critical functions and designate them as essential. Essential employees must report to work regardless of emergency conditions or stay at work regardless of a general dismissal of nonessential employees.

d. Leave administration.

- (1) Whether absences are charged to leave when an emergency develops during normal work hours depends upon whether the employee is on duty or on leave at the time of dismissal.
- (2) GSA will grant excused absence for employees on duty at the time of dismissal. An excused absence is appropriate for the remainder of the workday even if an employee was scheduled to take leave later in the day.
- (3) When an employee on duty leaves after receiving official word of the pending dismissal but before the time set for dismissal, the supervisor may grant leave for the period remaining before the dismissal. If the employee leaves without permission, the entire absence till the remainder of the workday should be charged to AWOL (absence without leave).
- (4) Employees on leave at the start of their tour of duty but scheduled to report later during that tour will be charged leave up till the time other employees already at the work site were dismissed. For instance if the dismissal is at 11 a.m., an employee scheduled for annual leave from 8 a.m. to noon would be charged annual leave only up till 11 a.m. and afterwards would be on administrative leave like everyone else.
- (5) If an employee was absent on approved annual leave, sick leave, LWOP, or compensatory time for his/her entire tour of duty, the absence is charged to appropriate leave.
- (6) Normally, when an employee is scheduled to report to work before the dismissal, but fails to do so, the absence is charged to annual leave, sick leave, or LWOP, as appropriate, for the entire workday. Exceptions to this policy should be made only in unusual circumstances.

e. Lesser emergencies. During lesser emergencies those that do not require complete shutdowns and dismissal, supervisors have authority, under a declared delayed arrival policy, to excuse individual employees for brief absence and tardiness, and, under a declared liberal leave policy, to grant leave even though not requested in advance.

4. Unplanned closings.

- a. Extremely serious situations developing during nonworking hours may result in an unplanned administrative closing when normal operations are prevented by events beyond the control of management and employees, for instance snowstorm, power failure, or fire. Less serious situations may be handled by a delayed arrival policy or liberal leave policy.
- b. During an unplanned closing by administrative order, employees scheduled to work will be excused without charge to leave or loss of pay for brief periods, up to 5 calendar days. The employees involved are placed on administrative leave. Workdays within their basic workweeks are nonworkdays for leave purposes. Employees on previously authorized leave will not be charged leave for those days. This does not apply to employees in nonpay status both immediately before and immediately after the period of the closing. Their nonpay status creates a legal presumption that they would not have worked but for the closing.
- c. Unplanned closings for more than 5 days should be handled as planned closings by detail, annual leave, or furlough. See par. 5, below.

5. Planned closings. When planning a nonemergency closing of an activity or the curtailment of its operations, the Associate Administrator for Administration and Regional Administrators may consider the following options:

- a. Detail to other useful work. When all or part of an activity is closing, employees may be temporarily detailed to other GSA activities which will operate normally during that period. Details may also be made to other agencies. Note Federal appropriations law prohibits unreimbursed details to other agencies in a line of work not "covered" by the appropriation from which an employee is paid.
- b. Annual leave. In the face of a planned shutdown where administrative leave will not be granted, employees may be put on annual leave for as long as their leave balance lasts. Ordinarily employees take annual leave only when they ask for it. In a shutdown, GSA has the authority to put employees on annual leave, even without their consent. However, for employees in bargaining units, check negotiated agreements for any restrictions.
- c. Administrative leave. When employees cannot be detailed elsewhere temporarily or put on annual leave, they may be granted administrative leave to avoid putting them in a nonpay status. Administrative leave for this purpose may be used for only short periods of time, and in no case for more than 5 days without the approval of the Director of Personnel.
- d. LWOP. Employees take LWOP at their own request. In the face of a planned shutdown where administrative leave will not be granted, employees whose annual leave balances are too low or who prefer not to disturb their accumulated leave may be placed on LWOP (but only at their request).
- e. Furlough. Furlough is a nonduty nonpay status. A furlough should be a last resort because it deprives employees of their normal pay checks. In most cases, details, administrative leave, and annual leave provide enough flexibility to deal with planned operational adjustments, without placing employees in a nonpay status. These other measures also avoid the strict procedural requirements of furloughs. However, furloughs are appropriate where facilities will be closed for extended periods of time. Officials considering furlough should ask for help from their operating personnel office.
- f. Implications for labor relations. Any or all of these measures may require at least consultation and sometimes negotiation with unions. Consult your labor relations officer and employee relations officer for advice and assistance.
- g. Leave and pay administration. For planned closings leave and pay administration follows normal rules for details, LWOP, and furlough. Annual leave is different in that employees may be placed on annual leave even without their consent or placed on administrative leave for short periods of time.

6. Designating essential employees.

- a. At least once a year, at a time of their choosing, HSSO's/RA's must, through the GSA internal directives system, identify essential personnel by title and notify them that they are designated as "essential." New or supplemental notices must be issued when requirements change. The notice should say that they, as essential personnel, must report to, or remain at, work in emergency situations and should explain that dismissal or closure announcements do not apply to them unless they are instructed otherwise.
- b. A designation of "essential" under emergency conditions is independent of a designation of "essential" (or excepted) during a lapse of appropriations, as provided by GSA Order,

Operations in the absence of appropriations (ADM 4220.1A). Employees may be essential for emergencies, for lapse of appropriations, or for both. For administrative convenience, a single annual designation, clearly distinguishing between the two possible designations, will suffice.

c. Instructions concerning employees on alternative work schedules are in ch. 12-7 and in FPM supplement 990-2, Book 620. HSSO's/RA's are responsible for determining closure and dismissal policies for employees on shift work and for informing them of these decisions.

d. Occasionally, in emergency situations, individual employees may face special family situations (e.g., when employees are expected to report to work, but the schools open late or are closed). HSSO's/RA's should develop their own policy and procedures and should be as flexible and understanding as possible in approving leave in these situations.

e. If a situation requires nonessential personnel to report to, or remain at work, the organization should notify them individually. Employees occupying positions not previously designated as essential must be made aware, in writing, of the special requirements placed on them for reporting to, or remaining at, their work sites.

7. Residential zone dismissal plan. By memorandum dated November 2, 1987, OPM issued new guidelines to Directors of Personnel concerning group dismissals or closure of activities in emergency situations in the Washington, DC, area. These guidelines apply to snow emergencies, severe icing conditions, floods, earthquakes, hurricanes, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting to work on time or which require agencies to close all or part of their activities. These procedures apply to all executive agencies (except the U.S. Postal Service) inside the Washington Capital Beltway. Facilities outside the Beltway are subject to different emergency and traffic conditions than those inside the Beltway. GSA facilities outside the Beltway should develop their local plans in cooperation with other agencies. See Appendix A to Book 610, FPM Supplement 990-2.

a. Exclusions from the plan. The concentration of Federal workers within the Capital Beltway requires that any change in their work hours because of emergency conditions be coordinated carefully with municipal and regional officials to minimize disruption of the highway and transit systems. For this reason it is essential that, to the extent possible, all GSA operations within the Capital Beltway comply with this area-wide plan and the announced decisions on dismissal or closure. Independent action must be avoided. Certain offices or activities, especially those in the outlying areas but within the Beltway, may need to be excluded from the plan. These organizations should inform the Associate Administrator for Administration of their need for exclusion from the plan. (Agencies are required to notify the office of Personnel Management of such exemptions and update such notices when necessary.)

b. OPM responsibilities.

(1) The Office of Personnel Management is the Federal Government's point of contact with the municipal governments and regional organizations, such as the Washington Metropolitan Area Transit Authority (METRO) and the Council of Governments (COG). The designated official at OPM will consult with appropriate municipal and regional officials and will brief the Director of OPM on highway, transit, and emergency conditions. The Director of OPM will then make the decision on whether and how to curtail Federal operations, whether by closure, dismissal, or special leave treatment. The Director's decision will be based on the need to keep Federal operations functioning as normally as possible and on concern for the safety of Federal employees.

(2) If the emergency occurs before normal working hours, OPM will make every effort to notify the news media by 6 a.m. of the policy to be announced. If the emergency occurs during work hours, OPM will notify agency personnel directors by telephone of any dismissal policy. OPM will also transmit the announcements over the Federal Emergency Management Agency's GP-2200 communications circuit to agencies with law enforcement or emergency responsibilities. GSA is on the circuit. The GSA communications center will notify the Director of Personnel of the announcements.

c. Agency responsibilities.

(1) At least once a year, in early autumn, the office of Personnel will issue an official notice through the directives system to all GSA employees in the Washington, DC metropolitan area, explaining the procedures for dismissals and closings. The notice will tell employees how they will be notified and include the text of the media announcements to be used and a detailed explanation of their meaning. The notice will also explain that accrued compensatory time may be used instead of leave or leave without pay (LWOP), if requested by the employee.

(2) At least once a year, HSSO's/RA's should identify through the GSA internal directives system essential personnel by title and notify them that they are designated as "essential" in accordance with par. 6.

d. Emergencies before the workday begins.

(1) OPM will provide one of the following announcements to the media when an emergency develops before the workday begins. The full meaning of these announcements will not be included in the media announcements. Employees should refer to the annual notice described in subpar. 7c.

(a) Federal employees should report to work on time. (Means Federal agencies will open on time and employees are expected to report as scheduled.) Note: OPM frequently does NOT make an announcement when NO changes are required in Federal operations.

(b) Federal agencies are open; reasonable tardiness will be excused. (Means employees are expected to report to work on time, but reasonable tardiness will be excused for those employees experiencing delays.)

(c) Federal agencies are open; employees may take leave without prior approval. (Means Federal agencies will open on time. Reasonable tardiness will be excused for those employees experiencing commuting delays. Employees -- except those designated as essential -- who are prevented from reporting to work because of emergency conditions, or who could expect to have difficulty returning home if they report for work, may take annual leave or LWOP without approval.) NOTE: In some situations, it may be necessary to combine the last two announcements above, as follows: Federal agencies are open, reasonable tardiness will be excused, and employees may take leave without prior approval.

(d) Federal agencies are closed today. (Means employees are excused from duty without charge to leave, except for essential employees, who are expected to report to work on time.)

(2) In determining the amount of excused absence to grant employees who experience commuting delays, supervisors should consider factors such as distance, availability and mode of transportation, and the success of other employees in similar situations.

(3) Workdays on which a Federal activity is closed are nonworkdays for leave purposes. Because leave cannot be charged for nonworkdays (5 U.S.C. 6302 (a)), employees who are on leave approved before the closure also must be granted excused absence. (Note: This does not apply to employees on LWOP pending disability retirement or while in receipt of workers' compensation, on military leave, on suspension, or in a nonpay status on the workday before and after the closure. These employees are not entitled to excused absence and should remain in their current status.)

e. Emergencies during normal work hours.

(1) OPM is unlikely to announce an early dismissal of Federal employees when an emergency develops during normal work hours because the bus and subway systems would find it difficult to organize an early rush hour. However, when early dismissal is authorized by OPM, employees should be dismissed in accordance with the Residential Zone Dismissal Plan developed by the metropolitan Washington Council of Governments. OPM will inform agencies of the dismissal time for Zone 1 residents. (The dismissal time for Zone 1 residents will be at least 1 hour after METRO and traffic officials have been notified to prepare for an outbound rush.) Residents of other Zones will be dismissed at half-hour intervals thereafter. Supervisors should exempt individual employees from authorized dismissal times under this plan only to avoid hardships (e.g., when an employee's car pool driver is dismissed earlier or when younger children are released early from school and no alternative forms of child care are available to the employee). The residential Zone for each employee will be determined as follows:

- (a) Zone 1 residents live beyond Montgomery, Prince George's, and Fairfax Counties.
- (b) Zone 2 residents live in areas of Montgomery, Prince George's, Fairfax Counties that lie outside the Beltway.
- (c) Zone 3 residents live inside the Beltway, but outside the District of Columbia.
- (d) Zone 4 residents live in the District of Columbia.

(2) Whether absences are charged to leave when an emergency develops during normal work hours depends upon whether the employee is on duty or on leave at the time of dismissal. The rules in subpar. 3d apply.

8. Lapse of appropriations.

a. GSA plan. The basic directive governing operations during a lapse of appropriations is GSA order, operations in the absence of appropriations (ADM 4220.1A)

b. Procedures. Unless notified otherwise, all employees report to work as regularly scheduled on the first day of a temporary lapse. For nonexcepted employees this is solely to prepare for shutdown. No steps should be taken that would compromise orderly resumption of operations when funding authority is restored. Excepted employees who continue to work during an appropriations lapse and nonexcepted employees who work to prepare for closing down operations, are in a pay status, working for delayed pay. They are not rendering gratuitous service and are duty bound to report for work.

(1) When officials decide that the preparations for shutdown are complete (usually within 1 day) nonexcepted employees will be dismissed. Released nonexcepted employees are placed in nonduty nonpay status by use of furlough under the adverse action procedures in part 752 of the FPM. The time of release must be accurately noted.

(2) Notice may be either written or oral. Advance written notice is preferable; bulletins addressed to all employees can be used, with a copy provided to each employee. If time is too short, oral notice may be given, followed later by written notice. Unions should be notified, preferably in advance.

(3) In all such instances to date, appropriations were made retroactively available to pay excepted employees for the time they worked and nonexcepted employees, both for the preparation time, before shutdown, and even for the time they were dismissed. Hence personnel offices have not had to document these short-term furloughs with SF 50, Notification of Personnel Action. However, if there were a protracted furlough where appropriations were not made retroactively available, complete documentation with SF 50's would be required.

(4) After appropriations resume, each affected activity will recall its employees in accordance with its established procedures.

c. Leave.

(1) During a lapse of appropriations, annual and sick leave may not be granted to employees in place of a furlough.

(2) An employee on accrued annual leave granted before the lapse may complete it and, if the lapse continues, is furloughed when the leave is over.

(3) An employee on accrued sick leave granted before the lapse may complete it. If the lapse continues and the employee recovers, he/she is furloughed when the leave is over. Additional accrued sick leave may be granted to an employee who was on sick leave before the lapse. When accrued sick leave is used up or the illness is over, the employee is furloughed if the funding lapse still exists.

(4) An employee who gets sick during a lapse may not be granted accrued sick leave.

(5) Advance sick leave may not be used during an appropriations lapse at all, regardless of whether it was granted before the lapse. Employees on advance sick leave during a lapse will be furloughed immediately and their advance sick leave canceled.

(6) If necessary the Administrator has the authority to cancel accrued annual and sick leave for routine appointments and examinations and to place affected employees on furlough or return them to duty for excepted activities. Canceled or interrupted leave is not forfeited but can be used later. Even if forfeited at the end of the leave year, it may be restored in accordance with the procedures in ch. 2-12.

## CHAPTER 10. RESERVED

**CHAPTER 11. FAIR LABOR STANDARDS ACT**

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**CHAPTER 11. FAIR LABOR STANDARDS ACT**1. General.a. Definitions.

(1) Administrative employee. An advisor, assistant, or representative of management or a specialist in a management or general business function or supporting service.

(a) "Primary duty," for administrative employees, is work that significantly affects the formulation or execution of management policies and programs or involves general management or business functions or supporting services of substantial importance to the organization, or involves substantial participation in the executive or administrative functions of a management official.

(b) Administrative employees perform office or nonmanual work that is intellectual and varied or of a specialized or technical nature requiring considerable training, experience, and knowledge. Administrative employees must frequently exercise discretion and independent judgment, under general supervision, in performing the normal day-to-day work.

(c) An 80 percent rule applies to GS-5 and GS-6 employees. They must spend 80 percent or more of their work time in a representative workweek in administrative functions and work that is an essential part of those functions. This is in addition to the primary duty criterion that applies to all administrative employees.

(2) Discretion and independent judgment. The exercise of discretion and independent judgment involves comparing and evaluating possible courses of conduct and interpreting results or implications and independently taking action, or making a decision after considering the various possibilities. Firm commitments or final decisions are not necessary to support exemption. The "decisions" made as a result of the exercise of independent judgment may consist of recommendations for action rather than action itself. The fact that decisions are subject to review, and that, on occasion, they are revised or reversed, does not mean that the employee is not exercising discretion and independent judgment at the level required for exemption.

(a) The work must involve sufficient variables as to regularly require discretion and judgment in determining the approaches and techniques to be used, and in evaluating results. By contrast, employees whose work primarily requires skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines that specifically govern their actions do not exercise discretion and independent judgement.

(b) The employee must have authority to make such determinations during the course of assignments., By contrast, entry level employees may be in a line of work that requires discretion, but they have not been given authority to decide discretionary matters independently.

(c) The decisions made independently must be significant. However, the term is not so restrictive as to cover only decisions made by employees who formulate policies or exercise broad commitment authority. Decisions that affect only the procedural details of the employee's own work, or decisions on whether a situation does or does not conform to clearly applicable criteria are not significant in this sense.

(3) Essential part of administrative or professional functions. In applying the 80 percent criterion to administrative and professional employees, there is a stringent requirement for related work. It must be an essential part of the administrative or professional functions to be included in exempt work. Agency personnel offices must examine the processes involved in performing the exempt function. For example, the processes involved in evaluating a body of information include collecting and organizing information; analyzing, evaluating, and developing conclusions; and frequently, preparing a record of findings and conclusions. Often the work of collecting or compiling information and preparing reports or other records, if divorced from the evaluative function, is nonexempt. When the employee who performs the evaluative functions also performs some or all of these related steps, all such work (e.g., recording test results, tabulating data, typing reports) is included in the employee's exempt duties. However, if an employee performs routine work in collecting, compiling, or presenting data on which some other employee does the evaluation, the time spent on such tasks must be counted against the 20 percent threshold.

(4) Executive employee. A supervisor, foreman, or manager who manages a Federal agency or any of its subdivisions (including the lowest recognized organizational unit with a continuing function) and regularly and customarily directs the work of at least three subordinate employees (excluding support employees) and meets all the following criteria:

(a) The executive employee's primary duty is management or supervision;

(b) The executive employee has authority to select or remove, advance in pay or promote, or make any other status changes of subordinates, or has authority to suggest or recommend such actions and particular consideration is given to these suggestions and recommendations; and

(c) The executive employee customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of managing subordinates, including personnel administration; and

(d) An 80 percent rule applies to foreman-level supervisors in the Federal Wage system and GS-5 and GS-6 employees and their equivalents in other wage and white collar pay systems. They must spend 80 percent or more of their work time in a representative workweek on supervisory and closely related work. This is in addition to the primary duty criterion that applies to all executive employees.

(5) Exempt area. Any foreign country, or any territory within the jurisdiction of the United States except a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island.

(6) Exempt employee. Employee not covered by, hence exempt from, the overtime rules of the FLSA. To be exempt, employees must meet specific exemption criteria. Otherwise they are presumed to be nonexempt.

(7) Formulation or execution of management policies or programs. Management policies and programs range from broad national goals that are expressed in statutes or Executive Orders to specific objectives of a small field office. Employees may actually make policy decisions or participate indirectly, through developing proposals that are acted on by others.

(a) Administrative employees engaged in formulation or execution of management policies or programs typically perform one or more phases of program management (i.e., planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing organization or of other organizations subject to regulation or other controls). Some of these employees are classified in occupations that reflect these functions (e.g., program analyst), but many are classified in subject matter occupations.

(b) Employees who significantly affect the execution of management policies or programs typically are those whose work involves obtaining compliance with such policies by other individuals or organizations, within or outside of the Federal Government, or making significant determinations in furtherance of the operation of programs and accomplishment of program objectives.

(8) General management, business, or support services. This element brings into the administrative category a wide variety of specialists who provide general management, business, or other supporting services as distinguished from production functions. The administrative employees in this category provide support to line managers by:

- (a) Providing expert advice in specialized subject matter fields, such as that provided by management consultants or systems analysts;
- (b) Assuming facets of the overall management function, such as safety management, personnel management, or budgeting and financial management;
- (c) Representing management in such business functions as negotiating and administering contracts, determining acceptability of goods or services, or authorizing payments;
- or
- (d) Providing support services, such as automated data processing, communications, or procurement and distribution of supplies.

(9) Nonexempt employee. Employee covered by, hence protected by, the overtime rules of the FLSA. Employees are presumed to be nonexempt unless they meet specific exemption criteria.

(10) Participation in the functions of a management official. Employees such as secretaries, administrative or executive assistants, and aides participate in some of the managerial or administrative functions of supervisors whose scope of responsibility keeps them from personally attending to all aspects of the work. To support exemption, such assistants must be delegated and must exercise substantial authority to act for the supervisor in the absence of specific instructions or procedures. Typically, these employees do not have technical knowledge of the substantive work under the supervisor's jurisdiction. Their primary knowledge is of administrative procedures, organizational relationships, and, more importantly, the policies, plans, interests and views of the supervisor. They apply such knowledge with substantial discretion in performing varied duties such as:

- (a) Personally attending to or redirecting calls and visitors;
- (b) Scheduling or rejecting invitations and requests for appointments;
- (c) Representing or arranging for another staff member to represent the supervisor in meetings or conferences;
- (d) Locating and assembling information, compiling reports and responding to nontechnical inquiries;
- (e) Composing varied correspondence on their own initiative and in response to incoming correspondence; or
- (f) Similar actions that significantly affect the supervisor's effectiveness.

(11) Primary duty. Work that constitutes a substantial, regular part of a position, and governs the classification and qualification requirements of the position, and is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.

(12) Principal activities. Activities that the employee is hired to perform, the duties of the position, as distinguished from merely preparatory or concluding activities.

(13) Professional employee. An employee whose primary duty is professional work and who frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work. An 80 percent rule applies to GS-5 and GS-6 employees. They must spend 80 percent or more of their work time in a representative workweek in professional functions and work that is an essential part of those functions. This is in addition to the primary duty criterion that applies to all professional employees.

(14) Professional work.

(a) Work that requires knowledge of a field of science or learning customarily and characteristically acquired through education or training that meets the requirements of a bachelor's or higher degree, with a major in, or related to, the specialized field (as distinguished from general education); or

(b) Work comparable to that performed by professional employees, based on specialized education or training and experience that has provided both theoretical and practical

knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

(c) Work in a recognized field of artistic endeavor that is original and creative in nature, the result of which depends on the invention, imagination, or talent of the professional employee (as distinguished from work that can be produced by person endowed with general manual or intellectual ability and training); and

(d) Work that is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretive thought processes for satisfactory performance.

(15) Recognized organizational unit. An established and defined organization with regularly assigned employees. This requirement distinguishes supervisors who are responsible for planning and accomplishing a continuing work load from leaders of temporary groups formed to work on special assignments of limited duration or who direct the work of other employees assigned to a project but do not exercise full supervision. Leaders of this nature do not qualify for exemption as executive employees.

(16) Regular working hours. The days and hours of an employee's regularly scheduled administrative workweek established in accordance with chapter 12-2.

(17) Suffered or permitted work. Any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to know that the work is being performed and has an opportunity to prevent the work from being performed.

(18) Supervisory and closely related functions. In applying the 80 percent criterion, if the nonsupervisory work performed is closely related to the supervisory functions, it can be included in the exempt work. If it is not closely related it must be counted against the 20 percent tolerance for nonexempt work. The basic test for identifying closely related work is whether or not the work contributes to the effective supervision of subordinate workers, or the smooth functioning of the unit supervised, or both.

(19) Work of an intellectual nature. Work requiring general intellectual abilities, such as perceptiveness, analytical reasoning, perspective and judgment applied to a variety of subject matter fields, or work involving mental processes that involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized application of established procedures or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting, or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions.

(20) Work of a specialized or technical nature. Work that requires substantial specialized knowledge of a complex subject and of the principles, techniques, practices, and procedures associated with the field. These knowledges characteristically are acquired through considerable on-the-job training and experience in the specialized subject matter field, as distinguished from professional knowledge acquired through academic education.

(21) Workday. The period between the start and finish of the principal activities that an employee is engaged to perform on a given day. All time spent by an employee in principal activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period.

b. Dual entitlements. The Congress extended the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938 to the Federal work force by the FLSA amendments of 1974. The 1974 FLSA amendments did not repeal, amend, or otherwise modify existing Federal pay laws (generally referred to as "title 5"). Instead, they set up a dual system of time and pay administration for nonexempt employees. Hours of duty and overtime rates are calculated separately under the two laws for the same workweek. Nonexempt employees are then paid under whichever law confers the greater overtime benefit. Exempt employees, who are not covered by the FLSA overtime rules, can earn overtime only under title 5. For a complete explanation of hours of duty and overtime under title 5 see chapter 12. Among the major features of the FLSA are:

(1) The law categorizes employees as either exempt or nonexempt based on the kind of work that they do. The law presumes that employees are nonexempt unless the employer shows that the employee meets certain exemption criteria, specifically those for the executive, professional, administrative, and foreign area exemptions.

(2) Overtime hours means more than 40 hours of actual work in a week. Paid absences such as annual leave, holidays, administrative leave, etc. generally do not count toward the 40 hour threshold. The number of hours in a day does not count.

(a) The rule in (2) above has an important exception. Paid periods of nonwork count as FLSA hours of work when the employee, under title 5, receives annual premium pay for standby duty or for administratively uncontrollable overtime (AUO) or receives overtime pay for regularly scheduled overtime work. (5 CFR 551.401(c)). (See par. 12-4a for an explanation of the difference between regularly scheduled overtime and irregular or occasional overtime work.)

(b) The exception for annual premium pay and regular overtime was the result of a recent court decision (Chester Lanehart et al. v. Constance Homer, et al. 818 F. 2nd 1574), as implemented with new regulations at 5 CFR 551.401(c). Before that decision, administration of the FLSA and title 5 in the Federal Government was completely separate. The decision dealt as much with the calculation of pay entitlements under the FLSA as with the definition of FLSA hours of work. This chapter explains only the impact of the decision on FLSA hours of work. The details of the overtime pay calculations are beyond the scope of this HB.

(3) Supervisors have added responsibilities for keeping accurate records of hours worked by nonexempt employees and for making sure that work is not performed when it is not needed, not wanted, or not ordered. Under the so-called "suffered or permitted" rule, agencies cannot accept the benefits of a nonexempt employee's work without paying for that work. They must pay even if the overtime is completely voluntary. For example, a nonexempt employee (with 40 hours of actual work that week) who voluntarily works during lunch or at the end of the shift to finish a task, or who takes work home is working overtime. By contrast, overtime under title 5 must be officially ordered or approved. Because of the potential for uncontrollable overtime costs, supervisors must actively enforce the rule against voluntary overtime from nonexempt employees and may be disciplined for failure to do so.

(4) Travel time counts differently. Under the FLSA, it is easier for travel time outside regular working hours to count as hours of work than it is under title 5.

(5) Compensatory time is not granted for overtime work. By GSA policy, overtime work under the FLSA must be compensated with overtime pay.

(6) Special overtime provisions apply to fire protection and law enforcement personnel.

(7) There is a formal system for appealing agency decisions on FLSA status (exempt or nonexempt) and for adjudicating claims for back pay. Employees may appeal status decisions within GSA and to OPM. Employees may file back pay claims with OPM or the Claims Division of the General Accounting Office (GAO), or may seek relief in the courts.

## 2. FLSA status.

a. Exempt vs. nonexempt. Employees are either exempt or nonexempt. These terms are confusing since they suggest the opposite of their true meaning. Nonexempt employees, in many work situations, have the benefit of two entitlements to overtime and get overtime pay under whichever one is more favorable. In other work situations, a nonexempt employee may

have an entitlement under only one law. Even so, the two laws together cover a greater variety of work situations than either law alone. The nonexempt employee therefore has a greater chance of qualifying for overtime pay than an exempt employee. Exempt employees earn overtime only under title 5. In certain situations, especially official travel, employees may not be entitled to any overtime benefits under either law. Personnel offices making status determinations should keep the following considerations in mind:

- (1) Exemption criteria must be narrowly construed to apply only to those employees who clearly fall within the terms and spirit of the exemption.
- (2) Employees are presumed to be nonexempt. The burden of proof rests with the agency personnel office. This rule was reinforced recently when the United States Court of Appeals for the District of Columbia Circuit overturned OPM regulations that had established a presumption that employees at GS-11 and above were exempt. (See 53 FR 1739.) The court reasoned that such regulations stood the FLSA on its head by presuming exemptions based on General Schedule grade. The actual impact of the decision was small since most jobs at GS-11 and above do in fact come under the executive, professional, or administrative exemptions.
- (3) Employees who meet the criteria for any of the four standard exemptions are exempt. The standard exemptions are foreign area, executive, professional, and administrative exemptions.
- (4) Combinations of exemption categories are possible. Although separate criteria are provided for executive, administrative, and professional employees, those categories are not mutually exclusive. Some employees may meet the criteria for more than one exemption. For example, a GS-12 Supervisory Accountant falls into both the executive and professional exemption categories.
  - (a) Although it is normally feasible and convenient to identify the exemption category, this is not essential. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee's primary duty may involve two categories that are intermingled and difficult to separate. The employee may still be exempted, provided the work, as a whole, clearly meets the other exemption criteria.
  - (b) Although an employee might not meet the criteria for exemption under what appears to be the most likely category, he/she may still be exempted under another category. For example, an engineering technician who fails to meet the professional criteria and is performing exempt administrative work, or an administrative officer who fails to meet the administrative criteria and is performing exempt executive work as a supervisor would both be exempt.
- (5) Exempt executive, administrative, and professional employees often perform nonexempt duties as part of their regular jobs. The percentage of time spent on nonexempt work will vary week by week and may be substantially full time in any one workweek. This does not make the employee nonexempt if, over a longer period of time, the exempt work remains the primary duty. However, if the employee spends most of his/her time on nonexempt work over a number of weeks, the supervisor should ask the personnel office to reevaluate the employee's position to determine whether the exempt work is actually the primary duty of the employee.

(6) Determinations of FLSA status may be made only by applying the exemption criteria to the duties and level of responsibility of each position. Therefore this chapter deliberately downplays references to classification standards and other sources of information. There are no lists of occupational series categorized as exempt or nonexempt. There are no references to classification factors in, for instance, the Supervisory Grade Evaluation Guide, or the GS-318 standard for secretaries. Determinations of FLSA status are really a matter of applying either the quick tests below or the definitions in subpart 1a to each position.

b. Quick tests. Certain kinds of positions are automatically assigned their FLSA status based on so-called quick tests. Quick tests are not rules of thumb. They are prescriptive rules directly derived from the standard exemptions and can be relied upon. There are no exceptions to quick tests. By contrast, rules of thumb are only generally true; there are always exceptions to rules of thumb. The courts recently forced OPM to repeal a regulation that, in effect, turned a rule of thumb (most GS-11's are exempt) into a quick test. Do not use rules of thumb; use the exemption criteria themselves or the quick tests below that embody those criteria.

- (1) Employees stationed or working all week in foreign countries are exempt. Hence all employees in pay plan FC (Foreign compensation) are exempt.
- (2) Employees in the Performance Management and Recognition System, that is, GM-13 through GM-15, are exempt. GM employees are either under the executive exemption, as supervisors, or under the administrative exemption, as management officials.
- (3) General Schedule employees whose positions are classified at GS-4 or below are nonexempt. GS-5 is the lowest grade in professional and administrative occupations and the lowest supervisory grade.
- (4) Nonsupervisory wage employees in pay plans WG and XP are nonexempt. Blue collar occupations are neither professional nor administrative and nonsupervisors cannot fall under the executive exemption.
- (5) General Schedule and Federal Wage System work leaders are nonexempt. This applies to FWS employees in pay plans WL and XL and to GS employees with "lead" or "leader" in their position titles, e.g. Lead Clerk-Typist.
- (6) Blue collar foremen and white collar supervisors classified at GS-5 and GS-6 who spend more than 20 percent of their time on nonsupervisory work that is not closely related to their supervisory functions are nonexempt. In other words, these employees must spend at least 80 percent of their time on supervisory or closely related duties before categorization as exempt employees.

- (7) General foremen and higher-level wage supervisors are exempt because they clearly meet the executive exemption.
- (8) Nonsupervisory employees classified in professional occupations below GS-7 are nonexempt.
- (9) Nonsupervisory employees classified in administrative occupations below GS-7 are nonexempt.

c. Foreign area exemption.

- (1) Employees stationed and working in exempt areas are automatically exempt. All foreign countries are exempt areas. Hence all FC employees are exempt. Certain American possessions -- all small uninhabited islands -- are exempt areas, but most American possessions are not.
- (2) Exempt area means any foreign country, or any territory within the jurisdiction of the United States except a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island. Hence the FLSA applies to the American territories specifically listed here.



(3) The exemption status of an employee to whom the foreign exemption does not apply must be determined under the general criteria for executive, professional, or administrative exemptions.

(4) An employee on temporary duty to an exempt area, but not permanently stationed there, is exempt when all hours of work in that workweek are in the exempt area. The exemption is applied on a full workweek basis; it does not apply to a workweek during which any nonexempt work is performed in the United States or one of the territories listed above even though all overtime work may have been performed in an exempt area.

d. Executive exemption. The name of this exemption is unfortunate in implying a high position in a hierarchy. A "boss" at any level who meets the definition of "executive employee" in par. 1a(4) falls under the executive exemption. That definition should be understood in the context of the definitions of related terms including "recognized organizational unit," "discretion and independent judgment," and "supervisory and closely related functions." Much of OPM's specific guidance in FPM Letters 551-7 and 551-13 is out-of-date or was judged to be inconsistent with the FLSA.

(1) Deputy or assistant supervisors are covered by the executive exemption provided they regularly share an exempt supervisor's responsibility for planning and directing the work of the unit and for related administrative and personnel management functions; and provided the supervisory functions constitute the deputy/assistant's primary duty.

(2) Working supervisors and assistant supervisors are not covered by the executive exemption if they regularly perform only a few supervisory functions. For example, someone responsible for assigning and reviewing work and giving on-the-job training but who does not have significant authority to initiate or recommend long range work planning, budget and staffing needs, or to recommend selection, promotion, reassignment, recognition, or disciplinary actions for employees of the unit would not be covered by the executive exemption;

(3) Working supervisors whose primary duty is the performance of nonsupervisory functions are not covered by the executive exemption;

(4) Employees who supervise only one or two other employees are usually not covered by the executive exemption. However, an exception is made for someone in sole charge of an office or field station that is geographically remote from the parent installation. This supervisor can be exempted if the level and scope of his/her supervisory functions substantially matches the definition of executive in subpar. 1a(4).

(a) Supervision over a unit located in a separate building within a large installation, even though it may be several miles from the office of the superior, does not qualify for this exception. Hence the supervisor is not covered by the executive exemption.

(b) Supervision over a branch office within the same city or metropolitan area qualifies provided that the superior does not spend a disproportionate amount of time reviewing the operations and resolving the problems of that branch office, and the branch office supervisor does not reserve normal supervisory responsibilities for action by the superior.

e. Professional exemption. This exemption applies to any professional employee whose work meets the definition of professional work in par. 1a(14). That definition should be understood in the context of the definitions of related terms including "work of an intellectual nature," "work of a specialized or technical nature," "discretion and independent judgment," and let essential part of administrative or professional functions."

(1) Entry-level professionals are usually nonexempt because they do not meet the criteria for discretion and independent judgment. The GS-7 level frequently is a developmental level at which employees receive close supervision in process as well as on completion of the work, which precludes exemption. However, some professional disciplines include, as part of the academic training, substantial experience in the practical application of theory and techniques (e.g., nursing or physical therapy) or laboratory courses that closely parallel work situations. Thus, in some professions, employees require relatively brief on-the-job training and are able to apply professional knowledge and independent judgment so that the jobs meet the criteria for a professional exemption at the GS-7 grade level.

(2) The GS-9 level includes varying combinations of developmental assignments and independent work that, within the realm of professional work, is relatively routine, but that nevertheless requires professional judgment. Although most employees at this level qualify for exemption, it will often be necessary to closely examine the frequency and degree of discretion and independent judgment exercised.

(3) Employees in technician positions who perform work in an engineering, scientific, or technical specialty are exempt when the nature of the work, discretion, and independent judgment are similar to the work performed by professional engineers and scientists. Engineers and engineering technicians at GS-9 or above may have similar project responsibility for designing new equipment or developing program policy instructions for systemwide use in the maintenance, repair, and overhaul of various vehicles.

(4) In graphic arts, painters who are given no more than the general subject-matter of their painting perform original and creative work. On the other hand, cartoon animators and photograph retouchers are exercising skill.

(5) In writing, the artistic exemption is appropriate for editorial writers, columnists, critics, and other writers of analytical and interpretive articles. The reporting of new or other factual information, rewriting stories received from various sources, and editorial work that primarily affects the form rather than the substance of the material is nonexempt.

f. Administrative exemption. This exemption applies to any employee who meets the definition in subpar. 1a(1). That definition should be understood in the context of the definitions of related terms, including "general management, business, or supporting service, participation in the functions of a management official," "formulation or execution of management policies or programs," and "essential part of administrative or professional functions." The examples below illustrate the application of these principles.

(1) Entry-level administrative employees are usually nonexempt because they do not meet the criteria for discretion and independent judgment. The GS-7 level typically is a developmental level at which employees perform varied assignments under close supervision, in process as well as on completion of assignments. Although the supervision is reduced as the employee gains competence, most employees at GS-7 would not frequently exercise discretion and independent judgment on significant matters, and thus would not qualify for exemption.

(2) The GS-9 level typically combines continued developmental assignments with independent though routine assignments. In two-grade interval occupations, even the more routine assignments are inherently varied, involving problems with differing interpretations, approaches, and solutions. Such work requires substantial discretion and judgment in the development, analysis, and interpretation of facts and inferences, with subsequent phases of the work dependent on conclusions formed at earlier stages. Employees performing work of this nature qualify for exemption, even when completed work must be approved or final decisions are made by others, provided that:

(a) The assignments involve matters that significantly affect management policies or functions or the operations of the organization advised, represented, or serviced;

(b) Final results are largely dependent on the results of the employee's actions and decisions during the course of the assignments;

(c) The employee makes the bulk of the interim conclusions and determinations independently, exercising discretion on which matters should be referred; and

- (d) The employee spends substantially full time on assignments of this nature.

(3) Within the broad administrative category, but not necessarily exempt, are a large number of employees who apply specialized knowledge and skills to relatively standardized or structured work. Such work typically is classified in one-grade interval occupations formed by isolating the more standardized work within administrative or professional fields into technician occupations. These include such functions as determining the acceptability of goods or services; approving or rejecting applications for various benefits or claims against the government; examining persons, property, or records for compliance with laws or regulations or for assessment of taxes; or similar functions in which employees act as representatives of management, often with substantial commitment authority.

(a) The identification of such occupations, however, cannot be relied upon as the sole determinant of exemption status. Such work is nonexempt when it is relatively standardized or can be structured so that most employees encounter recurrent kinds of situations that are covered by established guidelines. The work may require knowledge of a very extensive body of regulations, procedures, or precedent decisions applicable to a large number of different situations. However, the existence of established guidelines, if they are specifically applicable to the situation encountered (as distinguished from generalized guideline that must be interpreted or extended) precludes the discretion and judgment characteristics of exempt work.

(b) Similarly, there is no true discretion, as that term is used in exemption criteria, when the work primarily involves skill in applying established techniques and specific standards (as in most inspection work); determining that factual evidence does or does not conform to specified conditions that govern the actions taken (as in routine claims examining or processing of applications); or decisions that are a necessary result of a prescribed or directed action (as in preparing computer program instructions when the exact information and the exact form in which it is to be presented are prescribed by others).

(c) Although most of the employees in such occupations are nonexempt, often employees at the higher grade levels (e.g., GS-9 or GS-11) handle primarily cases for which guidelines are lacking or only generally applicable, or for which factual information is incomplete or contradictory. Such assignments may require the kind of analytical reasoning and interpretation discussed above for two-grade-interval occupations. If the work requires substantial discretion and judgment, as distinguished from skill in applying established techniques, standards, and subject matter knowledge on matters that significantly affect the operations of the organization or the execution of management policy, employees performing such work are exempt even though the occupation as a whole is considered nonexempt.

(d) As an example of the difference consider the statistical assistant who tabulates data and prepares reports in accordance with established statistical techniques and procedures and is nonexempt. The program analyst who may compile the same data but who then analyzes the results and draws conclusions from the data that influence program plans and budget allocations is applying discretion and judgement characteristic of exempt employees.

g. Temporary duty. There are special considerations in the application of the executive, administrative, and professional exemption criteria for periods of temporary duty or detail.

(1) A nonexempt employee who is assigned to perform duties that are not included in the employee's permanent position shall remain nonexempt for the entire period of the temporary duty unless the following three conditions apply:

- (a) The employee's primary duty for the period of temporary duty is exempt duty;
- (b) The temporary duty exceeds 30 days;
- (c) The employee occupies a permanent position, or is temporarily promoted to a position that is either:
  - (i) Classified at GS-7 or above (or the equivalent level in other white collar pay systems); or
  - (ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(2) An exempt employee who is assigned to perform duties that are not included in the employee's permanent position shall remain exempt for the entire period of the temporary duty unless the following three conditions apply:

- (a) The employee's primary duty for the period of temporary duty is not exempt duty;
- (b) The temporary duty exceeds 30 days; and
- (c) The employee occupies a permanent position, or is temporarily promoted to a position that is either:
  - (i) Classified at GS-7 or above (or the equivalent level in other white collar pay systems); or
  - (ii) Classified as a General Foreman (or the equivalent level in other wage systems);

(3) An employee who becomes exempt as above will be considered exempt for the entire period of temporary duty. An employee who becomes nonexempt will be considered nonexempt for the entire period of temporary duty.

(4) An exempt employee who is classified at GS-5 or GS-6 (or the equivalent level in other white collar pay systems), or who is classified below General Foreman (or the equivalent level in other wage systems) who is assigned to perform duties that are not included in the employee's permanent position shall remain exempt only if the employee spends more than 80 percent of a given workweek performing exempt duties, in which case the employee is exempt for that workweek.

(5) The rules on temporary duty do not apply when an employee is detailed to an identical additional position or to a position of the same grade, series code, and basic duties as the employee is regularly assigned to. The rules apply only when an employee is assigned to perform duties that are not included in the employee's representative workweek.

(6) In a designated emergency the exemption status of an employee shall be determined on a workweek basis and the employee shall be nonexempt for any workweek in which the employee performs more than 20 percent nonexempt work, regardless of an employee's grade level. This requires an official determination that an emergency situation exists that threatens the life or safety of people, or serious damage to property, or serious disruption to the operations of an activity, and there is no recourse other than to assign qualified employees to perform emergency duties. Check delegations of authority for officials who may so designate emergencies.

(7) Personnel offices must document details with SF 50, Notice of Personnel Action, whenever FLSA status changes with the period of temporary duty, as described above. Details over 30 days where FLSA status changes must be effected with an SF 50 regardless of the fact that staffing rules now allow undocumented details up to 120 days. This is to ensure notification to the employee and to Payroll.

h. Disputes over status. Employees may ask their servicing personnel office (through their supervisors) for a reconsideration of their FLSA status. Employees may also make a formal appeal to OPM for determination of FLSA status. (See par. 8.)

### 3. Hours of work.

a. General. Hours of work under the FLSA are different from hours of duty under title 5 as described in chapter 12. The two laws are applied independently to the work situations of nonexempt employees to determine whether a particular activity counts as hours of duty (title 5) or hours of work (FLSA). Nevertheless, the two laws operate in parallel in certain ways.

(1) Although there is no requirement under the FLSA that Federal employees have a regularly scheduled administrative workweek, in determining which activities count as hours of work, we still make a distinction under the FLSA between those activities done by employees during regular working hours and those outside regular working hours. For all practical purposes, regular working hours under the FLSA means the days and hours of the employee's regularly scheduled administrative workweek under title 5.

(2) Similarly, OPM has established identical administrative provisions for preparatory and concluding activities under the FLSA and preshift and postshift activity under title 5. For all practical purposes, preparatory and concluding activities, as distinct from principal activities, are compensable in exactly the same way as preshift and postshift activity as described in chapter 12-6.

#### b. Basic principles.

(1) Time considered hours of work under the rules in this chapter may be used only to determine an employee's entitlement to minimum wages or overtime under the FLSA and may not be used to determine hours of duty under title 5.

(2) Paid periods of nonwork are not usually hours of work under the FLSA. Annual, sick, and other kinds of leave, holidays, and excused absence (administrative leave) are not hours of work under the FLSA.

(3) Paid periods of nonwork, including annual, sick, and other kinds of leave, holidays, and excused absence (administrative leave), do count as hours of work under the FLSA for an employee who gets annual premium pay for standby duty, annual premium pay for AUO, or overtime pay for regularly scheduled overtime work.

(4) All time spent by a nonexempt employee performing work for the benefit of GSA and under the control or direction of the Agency is hours of work, including:

- (a) Time when an employee is required to be on duty including required overtime;
- (b) Overtime that an employee is suffered or permitted to work;
- (c) Waiting time or idle time that is under the control of GSA and that is for the benefit of GSA;
- (d) Travel time, training time, and standby time sometimes may be hours of work under the FLSA. (See subpar. 3k and pars. 6 and 7.)

(5) Supervisors and managers must control their subordinates to ensure they perform and are paid for only the work the supervisor intends them to do.

(6) Agencies are responsible for keeping complete and accurate records of all hours worked by employees.

c. Workday. Workday means the period between the start and finish the principal activities that an employee is engaged to perform on a given day. All time spent by an employee in principal activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period.

d. Rest period. An authorized rest period within the workday is considered hours of work if it is 20 minutes or less.

e. Meal period. Bona fide meal periods are not considered hours of work. The employee must be completely relieved from duty.

(1) For an employee to be considered completely freed from duty during the meal period, it is enough that he or she be free to leave the work station. It is not necessary that the employee be free to leave the premises.

(2) If meal periods are frequently interrupted by calls to duty, the employee is not considered relieved from all duties, and meal periods must be counted as hours worked.

(3) If meal periods are uninterrupted except for rare and infrequent emergency calls, the meal period can be excluded from compensable working time except on those occasions when the meal period is actually interrupted by the emergency call.

(4) Secretaries and other nonexempt support staff should be completely relieved from duty during the meal period and not allowed to sit at their workstations answering the phone. Supervisors should make and enforce alternative arrangements for phone coverage during the secretary's absence. Supervisors may not allow the secretary to answer the phone even if she or he volunteers to do so. Phone coverage during lunch time is one of the most frequent infractions of the rule against suffering or permitting employees to work overtime. Supervisors who do not actively and strictly prohibit such overtime are subject to disciplinary action.

(5) Paid breaks of 20 minutes or less are compensated already under both FLSA and title 5. Hence there is no FLSA overtime implication if an employee happens to work during a paid break. However, supervisors are bound by relevant provisions of negotiated agreements covering paid breaks.

f. Paid absences. Paid absences such as on holidays or for annual, sick or other paid leave, including administrative leave, generally are not periods of work under the FLSA despite the fact that the employee is compensated for these periods of nonwork under title 5. Periods of nonwork usually do not count toward the 40 hour threshold for overtime under the FLSA. However, if an employee works regular overtime that week under title 5, then paid absences do count toward the 40-hour threshold. (See subpar. 4b for examples.) Timekeepers must use appropriate transaction codes to record whether overtime work (and night work) under title 5 is regular overtime work or irregular or occasional overtime work. Categorizing overtime in this way has consequences for both overtime under the FLSA and premium pay under title 5. This makes it all the more important for supervisors to actively schedule and reschedule their employees in accordance with actual work requirements, including regular overtime, as prescribed by chapter 12-2e and chapter 12-4.

g. Medical attention. Time spent by an employee waiting for and receiving medical attention for illness or injury is hours of work when:

- (1) Medical attention is required on a workday after the employee reported to work and became ill or suffered an injury; and
- (2) Time spent getting medical attention falls during the employee's regular working hours; and
- (3) The employee receives medical attention on the agency premises or at the direction of the agency at a medical facility away from the premises such as a hospital or public health clinic.
- (4) Time spent taking a physical examination required for continued employment with the Agency is also hours of work.

h. Charity. Time spent working for public or charitable purposes at the Agency's request or under its direction or control is considered hours of work. Time spent voluntarily on such activities outside an employee's regular working hours is not hours of work. However, Federal appropriations law prohibits expenditures of public funds for purposes for which they were not appropriated. Agency managers should be extremely careful about requesting or directing employees to work for otherwise worthy public or charitable purposes, especially off the premises. Such activities may violate the Anti-Deficiency Act.

i. Grievances. Time spent by an employee adjusting his or her grievance or other appealable action during regular working hours is hours of work, whether the conference is held with the Agency representative or with a union representative.

j. Official time. Official time granted for representational functions during those hours an employee is otherwise in a duty status is considered hours of work. This includes representational functions carried out during regular working hours, regular overtime and periods of irregular or occasional overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.

k. Standby duty. Time spent on standby duty or in an on-call status.

- (1) An employee will be considered on duty, and time spent on standby duty will be considered hours of work if:
    - (a) The employee is restricted to an agency's premises, or so close that the employee cannot use the time effectively for his/her own purposes; or
    - (b) The employee, although not restricted to the agency's premises, is restricted to his/her living quarters or designated post of duty; has his/her activities substantially limited; and is required to remain in a state of readiness to perform work.
  - (2) An employee will be considered off duty, and time spent in an on-call status will not be considered hours of work if:
    - (a) The employee is allowed to leave a telephone number or to carry a beeper, even though the employee is required to remain within a reasonable call-back radius; or
    - (b) The employee is allowed to arrange for someone else to cover for him/her and take care of any work that may arise during the on-call period.
- l. Sleep time.
- (1) Bona fide sleep time is not considered hours of work if the tour of duty is 24 hours or more and facilities are adequate enough for an employee to usually enjoy an uninterrupted sleep of at least 5 hours.
  - (2) For employees engaged in fire protection activities or law enforcement activities, the exclusion of sleep time is appropriate for tours of duty of more than 24 hours only. Like other employees, they must have access to facilities adequate enough for an uninterrupted sleep of at least 5 hours.
  - (3) No more than 8 hours in a 24-hour period shall be considered sleep time.
  - (4) If sleep time is interrupted by a call to duty, the time spent on duty is considered hours of work.

#### 4. Overtime.

a. General. Overtime under the FLSA is considerably different from overtime under title 5. This section contrasts the two laws so that users of this HB will know which law controls a particular provision. Briefly, the main differences are these:

- (1) Under the FLSA, the chief characteristics of overtime are:
  - (a) Overtime pay is the straight time rate multiplied by all overtime hours worked plus one-half the employee's "regular rate" multiplied by all overtime hours worked; the regular rate is a calculated rate, not the basic hourly rate of pay;
  - (b) Work need not be officially ordered and approved, counting as overtime even if only suffered or permitted;
  - (c) Overtime for more than 40 hours in a week but not for more than 8 hours in a day;
  - (d) Only hours of actual work but not paid leave count toward the 40-hour threshold (except for employees with annual premium pay for standby duty, annual premium pay for AUO, or overtime pay for regularly scheduled overtime work);
  - (e) Compensatory time off provision limited to comp time within the same workweek. However, by GSA policy, nonexempt employees may not earn or take compensatory time at all;

- (f) No limitations on pay, such as the maximum rate limitation and the maximum earnings limitation under title 5;
- (g) Different criteria for hours of travel as overtime;
- (h) Special provisions for firefighters and police, described in par. 5.

(2) Under title 5, the chief characteristics of overtime are:

- (a) Overtime pay at time and one-half of basic pay;
- (b) Work must be officially ordered and approved;
- (c) Overtime hours are those over 8 hours in a day or over 40 hours in a week;
- (d) All hours in a pay status count toward the 8/40 threshold;
- (e) Compensatory time off is permitted;
- (f) Employees get a 2-hour minimum of pay for call-back duty even when they actually work less than 2 hours;
- (g) There is a maximum earnings limitation under which total or aggregate pay, including premium pay for any pay period, may not exceed the biweekly pay for GS-15, step 10;
- (h) A maximum rate limitation under which the hourly overtime rate may not exceed that for GS 10, step 1; and
- (i) Overtime for hours of travel is harder to get.

(j) Federal wage system employees are not subject to limits on overtime pay as are GS employees under title 5. Their overtime rate is time and one-half of their basic rate of pay, which includes certain differentials not included in the basic rate of GS employees, and FWS employees do not get compensatory time off. Any overtime they work must be paid for.

b. Overtime threshold. FLSA overtime usually means more than 40 hours of actual work in 1 week. The number of hours in a day does not matter. Only hours of actual work and not paid leave count toward the 40-hour threshold. However, when an employee earns regular overtime under title 5, then paid absences count as FLSA hours of work. These rules are best understood by examples.

(1) A nonexempt GS employee regularly scheduled for Monday thru Friday, 8 hours a day, with a half-hour lunch break, is officially ordered to work on Saturday for 6 hours. FLSA overtime is 6 hours, because FLSA hours of work total 46. In this case it did not matter whether the title 5 overtime was regular since there were no paid absences.

	S	M	T	W	Th	F	S	Total
Regular work		8	8	8	8	8		40
Overtime							6	6
Paid absence								0

FLSA hours worked = 46; FLSA OT = 6

(2) If the employee took 2 hours of sick leave on Tuesday, then it would matter whether title 5 overtime was regular. Assume the OT was not scheduled until Wednesday, hence is irregular or occasional overtime work. The hours of paid absence do not count toward the 40 hour threshold. FLSA hours of work total only 44, of which 4 are FLSA overtime. (Title 5 overtime is still 6 hours.)

	S	M	T	W	Th	F	S	Total
Regular work		8	6	8	8	8		38
Overtime							6	6
Paid absence			2					2

FLSA hours worked = 44; FLSA OT = 4

(3) Assume the OT was scheduled the previous week so it is regular overtime work. The hours of paid absence then count toward the 40 hours threshold. FLSA hours of work total 46, of which 6 are FLSA overtime. (Title 5 overtime is 6 hours.)

	S	M	T	W	Th	F	S	Total
Regular work		8	6	8	8	8		38
Overtime							6	6
Paid absence			2					2

FLSA hours worked = 46; FLSA OT = 6

(4) A nonexempt employee regularly scheduled for Monday thru Friday 8 hours a day with a half-hour lunch break is officially ordered on Monday to work 2 hours of irregular or occasional overtime work on Tuesday but takes 8 hours of annual leave on Friday for a personal emergency. The employee has no FLSA overtime entitlement because FLSA hours of work

for the week total only 34 (Title 5 overtime is 2 hours.)

	S	M	T	W	Th	F	S	Total
Regular work		8	8	8	8			32
Overtime							2	2
Paid absence						8		8

FLSA hours worked = 34; FLSA OT = 0

(5) A nonexempt employee works her regular hours of Monday thru Friday, 8 hours a day, with a half-hour lunch break. To meet a deadline, she voluntarily works through her lunch break and 1.5 hours on Wednesday after hours. Although the supervisor did not order her to do it, or even request approval of overtime from an official authorized to do so, he knew about it at the time and accepted her work. The extra 2 hours on Wednesday is FLSA overtime that the supervisor "suffered or permitted" his subordinate to work. Title 5 overtime is 0 hours because it was not officially ordered and approved. The supervisor is subject to disciplinary action for failure to control the work of his employee. The employee is not subject to discipline or reprisal for her voluntary overtime.

	S	M	T	W	Th	F	S	Total
Overtime		8	8	8	8	8		40
Regular work				2				2
Paid absence								0

FLSA hours worked = 42; FLSA OT = 2

(6) A nonexempt employee uses his home computer over the weekend for 7 hours on Saturday and 4 on Sunday to compile a report and turns it in to his boss on Monday. The supervisor knows that the employee must have worked on it on his own time since the feeder reports on which it was based did not arrive at the office until late Friday afternoon. The 11 hours is work that the supervisor "suffered or permitted." Since the weekend straddles 2 different workweeks, the overtime on Saturday belongs to one workweek, and that on Sunday to the next. Assume the Monday of the first week was a holiday. None of the Saturday work is FLSA overtime because there were only 39 hours of FLSA hours of work that week. In the second week, the employee is credited with 4 hours of FLSA overtime. Title 5 overtime in both weeks is 0 hours.

Week 1	S	M	T	W	Th	F	S	Total
Regular work				8	8	8	8	32
Overtime							7	7
Paid absence			8					8

FLSA hours worked = 39; FLSA OT = 0

Week 2	S	M	T	W	Th	F	S	Total
Regular work			8	8	8	8	8	40
Overtime		4						4
Paid absence								0

SA hours worked = 44; FLSA OT = 4

(7) A nonexempt GS-9 employee who regularly works 8 a.m. to 4:30 p.m. is told on Tuesday to work 4 hours past normal quitting time for the next 2 days in order to finish a project by the deadline. Monday was a holiday. Paid absences generally do not count toward the 40-hour threshold, so FLSA hours of work are only 40. Furthermore, under title 5, night pay is only for regular work, including regular overtime, but the 2.5 hours he worked each day after 6 p.m. were irregular or occasional overtime work. Hence the employee got only title 5 overtime but not night pay. The table below applies to both this and the following example.

	S	M	T	W	Th	F	S	Total
Regular work		8	8	8		8		32
Overtime			4	4				8
Paid absence					8			8
Night hours				(2.5)	(2.5)			0

Before FLSA hours worked = 40; FLSA OT = 0

After FLSA hours worked = 48; FLSA OT = 8

(8) A week or so later the same employee put in a claim under both title 5 and FLSA for back pay, arguing that his boss knew or should have known about the deadline and the status of the project during the previous week and scheduled him for overtime in advance, making it regular overtime work. The boss admits that she forgot about the coming holiday and should have put in the paperwork the week before for overtime, scheduling this particular employee who was the only one really familiar with the project. Under title 5, the agency is required to schedule and reschedule employees in accordance with actual work requirements (see chapter 12-2e). Hence, under title 5 and the Back Pay Act the employee is entitled to both night pay and overtime pay for Tuesday and Wednesday since it really was regular overtime work. This change also affects the employee's FLSA entitlements. Since the employee had regular overtime that week, the paid absence on Monday now counts toward the 40-hour threshold. FLSA hours are 48, including 8 hours of FLSA overtime. Payroll would go back and recalculate and compare title 5 and FLSA entitlements. Night pay not only changes the employee's entitlements for title 5 but also is factored into the calculation of the employee's regular rate for FLSA purposes. Note, the claim under title 5 had nothing to do with the suffered and permitted rule under FLSA. All the overtime in this situation was ordered and approved by an official with that authority. The success of the claim under title 5 depended on the fact that the overtime should have been scheduled in advance of the administrative workweek.

c. Overtime pay. The details of overtime pay are beyond the scope of this HB, which covers only the time and leave administration aspects of overtime, whether under FLSA or title 5. Briefly, the employee earns straight time pay plus half his or her "regular rate" multiplied by FLSA overtime hours. For FLSA purposes, the regular rate is calculated by dividing total remuneration for the week by FLSA hours worked. Total remuneration means payment for FLSA hours of work with certain inclusions and exclusions (5 CFR 551.511). Hence the regular rate is not necessarily equal to the basic hourly rate of pay. FLSA overtime pay entitlements are compared to title 5 overtime pay entitlements, if any, and the employee gets the greater overtime pay entitlement. This is added to pay under title 5 for everything except overtime. Just comparing total overtime hours under the two laws is not enough. Because of the difference between the calculated regular rate and the title 5 overtime rate and differences between hours of work, it is entirely possible for the overtime entitlement under the FLSA to be greater than under title 5 even with fewer FLSA overtime hours than title 5 overtime hours.

d. Reporting. FLSA hours are reported on GSA Form 3575, Time and Attendance Record, in accordance with chapter 5-8 of the Payroll Operations Timekeeper's Handbook (COM P 4282.1). The National Payroll Center determines whether reported FLSA hours count as FLSA overtime, calculates the employee's FLSA regular rate for the week, and compares his or her overtime entitlements under title 5 and the FLSA and pays the amount due.

5. Fire protection and law enforcement employees.

a. General. There are special FLSA provisions for nonexempt employees engaged in fire protection activities or law enforcement activities.

(1) Instead of hours of work, their compensation is governed by the concept of a "tour of duty" within a biweekly work period.

(2) The tour of duty includes all time the employee is on duty plus meal periods and sleep periods except that, for tours of duty of more than 24 hours, sleep time is excluded.

(3) Overtime means any hours in a tour of duty over the applicable overtime standard for a biweekly work period. For law enforcement employees, the threshold is 85.5 hours; for firefighters it is 106 hours. Section 7(k) of the Act provides for the Secretary of Labor to publish the thresholds based on a survey of the non-Federal sector. Firefighters and law enforcement employees have higher overtime thresholds because their work schedules are so different from those of ordinary workers, covered by section 7(a) of the Act.

(4) Paid absences count toward the overtime standard for employees who draw annual premium pay either for standby duty or for administratively uncontrollable overtime in a given week. However most law enforcement personnel who draw AUO are FLSA exempt. Many more, including most FPO's, are nonexempt but do not draw AUO. Nonexempt firefighters typically draw annual premium pay for standby duty.

(5) Just like with other employees, paid absences count toward the overtime standard for any employee who earns regular overtime during the week. Otherwise paid absences do not count. See examples in subpar. 4b.

b. Fire protection activities. Fire protection activities are those directly concerned with controlling and putting fires out or with inspecting facilities and equipment with the primary aim of reducing or eliminating fire hazards. GSA employees engaged in fire protection activities include:

(1) All employees properly classified in the Fire Protection and Prevention Series, GS-081, including any qualified firefighter who is assigned to support functions such as maintenance of fire apparatus, equipment, and alarm systems or communications. Patching work or preparation of records and reports are included when performed by firefighters but are not included when performed by mechanics, switchboard and radio operators, clerks, or other employees; and

(2) Employees whose primary duties are not related to fire protection but who perform fire suppression work on an as-needed basis, provided that the fire suppression work constitutes less than 80 percent of the employee's hours of work within any workweek.

c. Law enforcement activities. Law enforcement activities are those activities that are directly and primarily concerned with: patrol and control functions, including patrolling an area to enforce law and order and to protect the lives, property, and civil rights of individuals through prevention and detection of criminal acts; responding to complaints, violations, accidents, and emergencies; investigating for clues at the scene of a crime, interviewing witnesses, and evaluating evidence to locate suspects; and apprehending and arresting persons suspected of or wanted for criminal violations under a statutory prescribed arrest authority. Planning and conducting investigations relating to alleged or suspected violations of criminal laws, including the arrest of suspected or wanted persons under a statutory prescribed arrest authority are also law enforcement activities. GSA employees engaged in law enforcement activities include:

(1) Employees properly classified in the Police Series, GS-083, and employees excepted from the General Schedule who perform similar functions; and

(2) Employees properly classified in the Criminal Investigating Series, GS-1811.

d. Related work. Employees performing related work described below are not considered to be engaged in law enforcement activities:

(1) Employees whose primary duties concern the protection of Government property from hazards such as sabotage, espionage, theft, fire, accidental or willful damage and in so doing, control the movement of persons and protect the lives and property of persons on Government property. For example, Guards, GS-085, and other employees performing similar duties are excluded; and

(2) Employees who perform work concerned with the determination of the applicability of or compliance with laws and regulations when the duties primarily involve planning and conducting investigations covering the character, practices, suitability or qualifications of persons or organizations seeking, claiming, or receiving Federal benefits, permits, or employment. For example, GSA employees in the General Investigating Series, GS1810, are excluded.

e. Noneligibles. Nonexempt employees engaged in fire protection or law enforcement activities who do not meet the definitions above are not subject to sec. 7(k) of the FLSA. Instead they are subject to sec. 7(a) of the FLSA and entitled to additional compensation for all hours actually worked over 40 hours in a workweek.

f. Overtime standard. For section 7(k) employees, Congress departed from the standard "hours of work" concept and adopted an overtime standard keyed to the length of the "tour of duty."

(1) The overtime standard for employees engaged in fire protection activities is 106 hours in a 14-day work period.

(2) The overtime standard for employees engaged in law enforcement activities is 85.5 hours in a 14-day work period. Meal breaks, duty free or otherwise, are not excluded from hours worked in determining the overtime entitlement under section 7(k) of the FLSA of law enforcement employees unless they are required to be on duty more than 24 hours.

g. Law enforcement personnel. Overtime work for law enforcement employees covered by section 7(k) starts after 85.5 hours of work. The examples below illustrate this rule.

(1) A Federal Protective officer (FPO) normally works 80 hours during the biweekly work period, including paid lunch breaks. During the first week, the FPO works an extra shift and puts in a normal second week for a total of 88 hours in the pay period. Assume the FPO works the first shift regularly (midnight, to 8 a.m.) and has to cover the second shift on Wednesday for someone who fails to show up. Only the last 2.5 hours are FLSA overtime. The other 5.5 hours are straight time. (Under title 5 all 8 hours are overtime and the employee gets 6 hours of night pay each day for the 6 hours between midnight and 6 a.m.)

First week	S	M	T	W	Th	F	S	Total
Regular work		8	8	8	8	8		40
Overtime			8					8
Paid absence								0
Night hours		6	6	6	6	6		30
Second week								
Regular work		8	8	8	8	8		40
Overtime								0
Paid absence								0
Night hours		6	6	6	6	6		30

FLSA hours worked = 88; FLSA OT 2.5

(2) Assume the same situation as above except that the employee had an illness during the second week and took 2 days of sick leave. Under title 5, the overtime on Wednesday of the first week was irregular or occasional overtime work. Hence the paid absence during the second week does not count toward the FLSA overtime threshold of 85.5 hours. FLSA hours of work during the biweekly pay period are only 72 ( $40 + 8 + 24 = 72$ ).

First week	S	M	T	W	Th	F	S	Total
Regular work		8	8	8	8	8		40
Overtime			8					8
Paid absence								0
Night hours		6	6	6	6	6		30
Second week								
Regular work		8	8	8				24
Overtime								0
Paid absence					8	8		16
Night hours		6	6	6	0	0		18

FLSA hours worked = 72; FLSA OT = 0

Note the employee is not entitled to night pay for the absences on Thursday and Friday of the second week, when he was on sick leave. Under 5 CFR 550.122, an employee is entitled to a night pay differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours (except in the FWS).

(3) Assume the same situation as above except that the employee also went to the pistol range for 6 hours on Tuesday after his regular shift to fulfill an annual requirement. The time at the pistol range was foreseen and scheduled well in advance. Under title 5, the overtime on Tuesday of the first week was regular overtime work even though the overtime on Wednesday was not. Since the employee worked regular overtime during the work period, the paid absence during the second week counts toward the FLSA overtime threshold of 85.5 hours. FLSA hours of work during the biweekly pay period total 94 ( $40 + 6 + 8 + 40 = 94$ ). FLSA overtime is 8.5 hours ( $94 - 85.5 = 8.5$ ).

First week	S	M	T	W	Th	F	S	Total
Regular work		8	8	8	8	8		40
Overtime		6	8					14
Paid absence								0
Night hours		6	6	6	6	6		30
Second week								
Regular work		8	8	8				24
Overtime								0
Paid absence					8	8		16
Night hours		6	6	6	0	0		18

FLSA hours worked = 94; FLSA OT 8.5

h. Fire protection personnel. Firefighters typically work three shifts of 24 hours each or 72 hours a week for a grand total of 144 hours per biweekly pay period. They earn annual premium pay for standby duty under title 5. Since their FLSA overtime standard is 106 hours, they work 38 hours of FLSA overtime in each work period ( $144 - 106 = 38$ ). Sleep time is included in FLSA hours worked since each shift is 24 hours, but not over 24 hours.



(1) Assume a nonexempt firefighter takes 3 days of court leave to go on jury duty. The biweekly total of FLSA hours is still 144 because paid absences count when an employee is drawing standby duty pay.

(2) Assume a nonexempt firefighter takes two shifts off for sick leave because of an illness during the first week. During the second week, he has to cover the unexpected absence of another firefighter. The firefighter earns title 5 overtime for the extra shift, which is irregular or occasional overtime work. The paid absence still counts as FLSA hours of work, even though the overtime was not regular overtime. The employee, in fact, is not eligible for regular title 5 overtime since standby duty pay takes the place of any other premium pay except for overtime pay for irregular or occasional overtime work. Paid absences count when an employee draws regular overtime pay or standby duty pay or AUO. In the biweekly work period, FLSA hours total 168 ( $144 + 24 = 168$ ). FLSA overtime is 62 hours ( $168 - 106 = 62$ )

6. Travel.

a. General. Under both title 5 and FLSA, all travel during regular working hours is considered hours of work. Time outside regular working hours spent traveling away from the official duty station is treated differently under the two laws. Under the FLSA, travel outside normal working hours is compensable when:

- (1) The employee drives a Government vehicle from home to work as a requirement of the agency.
- (2) The employee travels from one job location to another within the confines of the official duty station.
- (3) The employee is the driver or pilot, or assists in operating a vehicle, or is required to work while traveling.
- (4) The employee is a passenger on a 1-day assignment away from the employee's official duty station.
- (5) The travel occurs during hours of a nonworkday corresponding to regularly scheduled work hours of a workday, and the travel keeps the employee away overnight. If the nonexempt employee travels outside the corresponding hours, the travel is not counted as hours of duty for overtime under the FLSA.
- (6) The employee waits in a terminal before departure.

b. Travel from home to work. An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal home-to-work travel, which is not hours of work. Home-to-work travel is not hours of work, not even when an employee at home gets an emergency call outside regular hours to travel to either the normal duty location or another job site within the limits of the employee's official duty station. Nor is it hours of work when an employee reports at a designated meeting place and is transported (as a passenger) by Government vehicle to a job site. Home-to-work travel does count as hours of work in the following situations:

- (1) An employee drives a Government vehicle home as a requirement of the employing agency to be ready to respond to emergency calls immediately from his/her home.
- (2) An employee drives a Government vehicle home (as a requirement of the employing agency) to transport other employees between home and work (or a job site).
- (3) An employee goes to a designated meeting place and drives a vehicle (as a requirement of the employing agency) to transport other employees or equipment to a job site.
- (4) An employee reports to a designated meeting place (receives instructions, performs other work, or picks up and carries tools) and is transported (as a passenger) by Government vehicle to a job site. The travel from home to the designated meeting place (and return) is normal home-to-work travel. However, the performance of work or other activity that is an integral part of the employee's job (e.g., picking up tools or receiving instructions) at the designated meeting place counts as the start of the employee's workday. All subsequent travel (to a job site and return) is hours worked.
- (5) An employee (at home) receives an emergency call outside regular working hours to travel to a temporary duty station (outside the limits of the official duty station). When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home-to-work travel is deducted from the travel time, the rest of which is hours of work under the FLSA.

c. Employee's choice of time or mode of transportation. An employee offered one mode of transportation and who is allowed to use an alternative mode, or an employee who travels at a time other than that chosen by GSA is credited with the lesser of actual travel time if it counts as hours of work under the FLSA, or the estimated travel time that would have counted as hours of work under the FLSA had the employee used the original mode of transportation or traveled at the time chosen by GSA. This rule applies only to time actually spent traveling between an employee's official duty station and the destination or between two temporary duty points and for usual waiting time that interrupts such travel. Whether time spent at a temporary duty station is itself FLSA hours worked is determined under the normal rules governing hours of work under FLSA.

(1) Travel by mode of transportation of the employee's choosing. When an employee for personal reasons, such as a fear of flying, does not use the mode of transportation selected by GSA, the employee shall be credited with:

- (a) That portion of the actual travel time that is to be considered working time under these instructions, or;
- (b) That portion of the estimated travel time that would have been considered working time under these instructions had the employee used the mode of transportation selected by the employing agency;
- (c) Whichever is less. Note the travel itself must be considered working hours before this rule applies.

(2) Travel at a time of the employee's choosing. Employing agencies are responsible for specifying, within reasonable limits, the time during which authorized travel will be performed by its employees. To the maximum extent practicable, the travel of an employee away from the official duty station shall be scheduled within the employee's regularly scheduled workweek. When an employee, for personal reasons, travels at a time other than the time selected by the employing agency or for personal convenience travels by an indirect route or interrupts such travel, the employee shall be credited with:

- (a) That portion of the actual travel time considered working time under these instructions, or;
- (b) That portion of the estimated travel time that would have been considered working time under these instructions had the employee traveled at the time and by the route selected by the employing agency;
- (c) Whichever is less. Note the travel itself must be considered working hours before this rule applies.

d. Travel within the limits of the official duty station. Travel time during regular working hours within the limits of the official duty station either as a driver or as a passenger as part of a job assignment is all in a day's work and counts as FLSA hours worked. Travel time before or after regular working hours and within the official duty station is hours of work when it is directly associated with the performance of a given job assignment and serves to extend the employee's regular tour of duty. Normal home-to-work(work to home) travel and bona fide meal periods are not included in hours worked. Travel directly from home to a job site located within the official duty station is considered normal home-to-work travel and not compensable. Examples of travel within the official duty station that count as hours of work include:

- (1) From normal duty location to job site
- (2) From job site to job site
- (3) From job site to normal duty location

(4) NOTE: the term "job site" here means a duty location within the limits of the official duty station other than the employee's normal duty location. Official duty station has the same meaning under the FLSA as under travel regulations; it includes areas within the established mileage radius.

e. Work performed on travel away from the official duty station. Any work an employee is required to perform while traveling away from the official duty station counts as hours worked. An employee is working while traveling when required to drive a vehicle, pilot an aircraft, or a boat to a given destination, and such travel time counts as hours worked. An employee required to ride on such trips to assist in the operation of the conveyance is also working while traveling. Furthermore, any other employee required to perform work while traveling shall have the time spent traveling counted as hours worked. Bona fide meal periods are deducted from hours worked. Under certain conditions sleeping periods or periods when an employee is relieved from duty are not included in hours worked. Examples of duties where travel counts as hours of work include:

- (1) Driver of an automobile, truck, bus, or other vehicle;
- (2) Pilot of an airplane, helicopter, or other aircraft;
- (3) Pilot of a boat, barge, or other vessel (not subject to the seaman exemption);
- (4) Assistant driver or crew member assisting in the operation of a vehicle, aircraft, or boat;

(5) Any other employee required to perform work while traveling, including a courier carrying classified documents, a guard escorting a prisoner, or a security specialist guarding classified or valuable equipment in transit.

(6) If two or more employees share driver and passenger roles, each is considered to be performing work while traveling only for that portion of the trip during which he/she is actually driving the vehicle.

f. Travel as passenger on a 1-day assignment. Travel during the same day, as a passenger, to and from a temporary duty station outside the official duty station is part of the employee's principal duties for that particular day and counts as hours worked regardless of whether it happens during regular working hours. Hours of work under FLSA include:

- (1) Normal waiting time at the terminal prior to scheduled departure time of a common carrier (airplane, bus, train).
- (2) Travel time from scheduled departure time from the common carrier terminal to arrival time at the terminal at point of destination.
- (3) Usual waiting time at common carrier terminals that interrupts travel.
- (4) Travel time from the terminal at point of destination to temporary duty station.
- (5) Travel time by automobile from official duty station to temporary duty station.
- (6) Travel time by automobile from home directly to the temporary duty station.
- (7) Bona fide meal periods are not included in hours worked.

(8) However normal home-to-work (work-to-home) travel is not included in hours worked. Hence travel time between the employee's home and the common carrier terminal is usually not included in hours worked. However, if the common carrier terminal is outside the official duty station and the employee's travel time from home to common carrier terminal takes longer than normal home-to-work travel, the employee is credited with the excess travel time as hours worked.

(9) Normal waiting time at the terminal from designated pre-departure time until, scheduled departure time of the common carrier is hours worked. Any waiting time over normal waiting time is not hours worked. The rules of a common carrier may require an employee to arrive at a common carrier terminal at a designated pre-departure time (e.g., 30 minutes before the flight).

- (10) Usual waiting time for a connecting flight is considered normal waiting time and is counted as hours worked.

g. Corresponding hours. An employee who travels during regular working hours on a regular workday as a passenger to a temporary duty station outside the limits of the official duty station and has to remain at the temporary duty station for one or more nights is substituting travel for other duties during these hours, and the time spent traveling is hours worked. The same principle applies to such travel as a passenger during corresponding hours on nonwork days, hours that correspond to an employee's regular working hours on regular workdays. However, time spent traveling as a passenger that occurs outside regular working hours and outside corresponding hours on nonwork days is not considered hours of work if the travel keeps the employee away from the official duty station overnight and the employee performs no work while traveling. For instance, if an employee regularly works from 9 a.m. to 5:30 p.m. Monday through Friday, travel performed during these hours on any of the 7 days of the workweek, including travel time on Saturday, Sunday, or a holiday, is working time. Travel time after 5:30 p.m. or before 9 a.m. does not count as hours of work. Bona fide meal periods also do not count as hours worked. Excess waiting time during corresponding hours on nonwork days also do not count as hours worked. Excess waiting time is time spent at a common carrier terminal over the normal waiting time.

h. Travel across time zones. When an employee travels across time zones, the time zone from point of first departure for the workday is used to determine whether the employee

performed the travel during regular working hours or during corresponding hours on nonwork days. For example, if an employee starts travel on Monday in Washington, DC, with a short stopover in Denver, CO, and then travels to Los Angeles, CA, later that same day, the eastern time zone is used to determine whether the travel was performed during the employee's regular working hours. If the same employee later returns from Los Angeles to Washington on Saturday, a nonwork day, Pacific time is used to determine whether the travel was performed during corresponding hours.

i. Home-to-work travel at a temporary duty station. The principle under FLSA travel rules that an employee shall not be compensated for normal home to work travel applies to commuting time while assigned to a temporary duty station overnight. For this purpose the employee's temporary duty station is considered the equivalent of the official duty station during the temporary duty assignment. Therefore, the time spent by the employee commuting from his/her temporary lodgings (hotel, motel, etc.) to the normal duty location or to a job site within the limits of the temporary duty station, is considered home-to-work travel and is not working time under the FLSA, unless it meets one of the specific conditions in par. 6d. When an employee, for personal reasons, does not use temporary lodgings provided at a temporary duty station and commutes daily from his/her home (or from temporary lodgings other than those specified at the temporary duty station), the daily home-to-work travel time is not work under the FLSA. However, travel time over normal home-to-work travel time to the temporary duty station on the first day of the temporary duty assignment, and from the temporary duty station to home on the last day of temporary duty assignment, is considered hours worked under the FLSA if it meets the rules for compensable travel time. (See pars. 6f and g.)

j. Home-to-work travel while driving a passenger vehicle. Normal home-to-work travel time is deducted from the travel time of a Federal employee who drives a passenger vehicle directly from his/her home to a temporary duty station located outside the limits of the official duty station, provided the home-to-work travel is performed outside regular working hours (including outside corresponding hours on a nonwork day). Thus, if an employee drives himself/herself in a passenger vehicle outside regular working hours (including outside corresponding hours on a nonwork day) directly from his/her home to a temporary duty station, only the time spent driving over normal home to work travel time is counted as "hours of work." This deduction also applies when a driver of a passenger vehicle picks up and drives another employee or group of employees directly to a temporary duty station, provided, of course, that the driver was not specifically required to do so by the employing agency. On the other hand, if the employee drives from his/her home directly to temporary lodgings at the temporary duty station (or between lodgings at one temporary duty station and another temporary duty station), this is not considered home to work travel and, therefore, it cannot be deducted from compensable travel time.

(1) Excess travel time outside regular and corresponding hours as a driver on a one-day assignment from home directly to the temporary duty (TDY) station or job site (or the reverse trip) counts as hours of work if the TDY station is outside the official duty station. Travel time does not count if the job site is within the limits of the official duty station. (Travel time during regular hours as a driver is always hours worked.)

(2) Overnight travel outside regular and corresponding hours, as a driver, to the first temporary duty station counts as hours of work if it is from home directly to the TDY station, from home directly to temporary lodgings, from a TDY station directly home, or from temporary lodgings directly home. Travel between temporary lodgings and the TDY station is equivalent to home to work commuting and is not hours of work.

(3) Overnight travel outside regular working hours, including outside corresponding hours on a nonwork day, as a driver to another TDY station outside the limits of the first TDY station counts as hours of work if it is from the first temporary lodgings to the second TDY station or job site, from first temporary lodgings to the second temporary lodgings, or from first TDY station to the second temporary lodgings. Normal commuting time from the first temporary lodgings to first TDY station is deducted, except for the trip between first and second temporary lodgings. Excess travel time on the return trip from the second TDY station to first temporary lodgings is also compensable. If the employee for personal reasons does not use temporary lodgings at the second TDY station, the daily commuting time on the second and later days from first temporary lodgings to second TDY station is not compensable.

(4) Travel time outside regular working hours, including outside corresponding hours on a nonwork day, is not hours of work if it is within the limits of the first TDY station, whether from first temporary lodgings to second TDY station or job site, from first temporary lodgings to second temporary lodgings, or from first TDY station to second temporary lodgings.

k. Title 5. Under title 5, it is much harder for travel time outside the employee's regular working hours to count as hours of work. (See chapter 12-5 for details.) Travel time outside the employee's regularly scheduled administrative workweek counts as title 5 hours of work when the travel:

- (1) Involves performing work while traveling,
- (2) Is incident (related) to travel that involves performing work while traveling,
- (3) Is carried out under arduous conditions, or
- (4) Results from an event that could not be scheduled or controlled administratively and there is an immediate official necessity, caused by the uncontrollable event, for travel outside the employee's regularly scheduled administrative workweek.

## 7. Training.

a. Legal background. Time spent in training outside regular working hours is compensable as hours of work under the FLSA if the criteria in section 551.423 of the regulations in Part 551 of title 5, Code of Federal Regulations, are met. Although section 4109(a)(1) of title 5, United States Code, prohibits premium pay, including overtime pay, for time spent in training, the two laws are administered separately and independently, with nonexempt employees being paid under whichever law provides them the greater overtime pay benefit.

(1) The instructions here on overtime for training under the FLSA do not apply to time spent in training by employees during overtime hours under title 5. The prohibition on the payment of premium pay, including overtime pay, contained in 5 U.S.C. 4109(a)(1) is still applicable in the administration of premium pay under title 5. (See chapter 12-4e for the rules under title 5 including the exceptional situations in which training overtime counts as hours of duty under title 5.)

(2) Whether time spent in training shall be considered hours of work under the FLSA is a separate and independent determination. The fact that an agency has authorized the expenditure of Government funds for an employee's attendance at such training under FPM Chapter 410 has no bearing on this determination.

b. Learning own duties. In general, a Federal employee is paid for all time spent learning the duties and responsibilities of his or her current position. This includes any time spent on remedial training or training on revised procedures, products, or processes that is required for the continued performance of the duties of his or her current position. Therefore, if an employee is directed to participate in such training, the training is primarily for the benefit of the agency, and the time spent in training is hours of work under FLSA. On the other hand, if an employee voluntarily attends a training program to improve his or her performance, or attends a training program to enhance his or her opportunity for reassignment to another position or advancement to a higher grade, such training is primarily for the benefit of the employee. Time spent in this type of training is not hours of work under FLSA.

c. During regular hours. If an agency schedules an employee to attend training during regular working hours, the time spent by the employee in such training is hours of work, unless the employee's attendance is during a period of paid leave or leave without pay.

d. Outside regular hours. Time spent on training required by the agency and outside regular working hours is hours of work under the following conditions:

(1) Training to meet identified deficiencies in an employee's performance of his or her current position. Such training is designed to bring the employee's performance up to an acceptable level as determined by the agency.

(2) Training to provide an employee the knowledge or skills to perform new duties or responsibilities required in his or her current position. This is training in revised procedures, products, or processes so that the employee may perform the duties and responsibilities of his or her current position at an acceptable level.

e. Training not qualifying. Training for the following purposes does not meet the criteria in 5 CFR 551.423(a)(2), and the time spent in such training outside regular working hours is not hours of work under FLSA:

(1) Training to improve an employee's performance in his or her current position above an acceptable level, provided such training is undertaken with the knowledge that the employee's performance or continued retention in his or her current position will not be adversely affected by non-enrollment in the training program. This includes training at an independent school, college, or independent trade school, or training at a Federal activity that corresponds to training offered by an independent institution of learning.

(2) Training to provide an employee with additional knowledge or skills for reassignment to another position or advancement to a higher grade. This includes any developmental training or upward mobility training, even if such training is directed by the agency.

f. Apprenticeship, internship, or training under the Veterans Readjustment Act. For employees engaged in an apprenticeship program or other entry-level training programs, an internship program or other career-related work study programs, or employees appointed under the Veterans Readjustment Act (5 CFR Part 307), time spent in productive work or performing regular duties is hours of work. This includes any training scheduled during an employee's regular working hours. However, any related supplemental training or preparatory time for attendance at such training that is performed outside regular working hours is not hours of work, provided no productive work is performed during such periods.

g. Preparatory time for training.

(1) Allowance for preparatory time. An agency may allow employees reasonable time to prepare for their attendance at a training program, if such preparation is closely related to and is indispensable to satisfactory completion of the training program. If an agency or training facility determines that an allowance for preparatory time is appropriate, it is good practice for employees who are scheduled to attend such training to be advised of the time allowed for preparation before commencement of the training program. They should also be advised that any additional time spent in preparation for the training program is their own time and is not worktime under the FLSA.

(2) Preparatory time as hours of work.

(a) Time spent by an employee within the allowance for preparatory time shall be considered hours of work, provided that such preparatory time is during an employee's regular working hours or, if outside the employee's regular working hours, the purpose of the training meets the general requirements in subpar. d.

(b) If an agency allows an employee preparatory time during regular working hours, such time actually spent by the employee within the allowance of preparatory time is hours of work. However, if an employee takes paid leave or leave without pay to prepare for his or her attendance at a training program, such time is not hours of work under FLSA.

(c) Preparatory time outside the employee's regular working hours is hours of work only when the employee is directed to participate in the training and the purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position. Time spent by an employee for this purpose within an agency's allowance of preparatory time is hours of work. An employee may voluntarily spend additional time in preparation for training; however, such additional time over the agency's allowance is not hours of work.

(d) Even though an employee is allowed to attend training during regular working hours, this fact alone does not make the preparatory time for attendance at the training program compensable as hours of work under FLSA. The purpose of the training must meet the general requirements of subpar. e before preparatory time outside regular working hours counts as hours of work.

h. Time spent at a lecture, meeting, or conference. Time spent attending a lecture, meeting, or conference during regular working hours is hours of work. However, if an employee's attendance at such an activity is during a period of paid leave or leave without pay, such time is not hours of work under FLSA. For the time spent in attendance at such an activity outside regular working hours to be considered hours of work, the conditions specified in subpar. e must be met.

8. Appeals and claims.

a. General. Employees may appeal their FLSA status within the agency or to OPM. Complaints of violations of overtime rules and claims for back pay may be addressed to the agency, to OPM, to the Claims Division of the General Accounting office (GAO), or to the courts. The statute of limitations depends on the forum chosen.

b. Appeals and claims to GSA. It is often to the employee's advantage to appeal within GSA since the appeal or claim may be resolved more speedily.

(1) Employees should ask their GSA personnel office to review the FLSA status of their positions if they believe it is wrong. Generally, the request should be in writing. However, an oral request for simple clarification of the basis for the status determination is also acceptable. Employees not satisfied with the oral clarification should send a written request. The personnel office will review the FLSA status of their position and reply with a written statement of the basis for the determination.

(2) Employees with claims for overtime pay must submit their claim in writing. GSA can pay nondoubtful claims directly. Doubtful or controverted claims will be denied and may be referred by GSA to GAO. Alternatively, employees may take their claim to OPM, to GAO or even to the courts.

(3) The statute of limitations is 6 years. Claims accrue day by day. Hence, that part of a claim more than 6 years old will be barred. Filing a claim with GSA does not stop the clock running on the statute of limitations. If a claim for back pay goes back more than 4 years, the employee should file the claim with GAO through their servicing personnel office stating specifically that the claim is being adjudicated by GSA and that the filing with GAO is solely for the purpose of tolling the statute of limitations (stopping the clock) under the Barring Act, 31 U.S.C. 3702(b). Claims so recorded with GAO will be returned to GSA and will be adjudicated in the normal manner. Back pay for valid claims may be paid up to 6 years from the date the claim was recorded at GAO. The 4 years mentioned above is merely a guideline to ensure an adequate safety margin. Only if part of the claim is just days away from the 6-year cutoff should employees file directly with GAO. Filing through GSA takes a few days longer, but in almost all cases expedites the overall process. GAO has to refer claims back to GSA anyway for an administrative report or adjudication. However, employees have the right to toll the statute of limitations on any claim, even a recent one, by filing with GAO.

c. Appeals to OPM. The U.S. Office of Personnel Management is responsible for administering the FLSA for most Federal employees, including those paid with either appropriated or

nonappropriated funds. Under the FLSA, OPM assumes the same protective relationship vis a vis covered Federal employees as the Department of Labor has traditionally assumed relative to the non-Federal work force in matters related to overtime pay, minimum wages, equal pay, and child labor. OPM conducts compliance reviews of agencies and resolves employee complaints about alleged violations.

(1) OPM's FLSA Compliance Unit coordinates all of OPM's compliance and complaint activities under the Fair Labor Standards Act. It is intended as a screen prior to judicial review – an equitable, expedited complaint process that enables the employee to avoid the expense of a lawsuit. Coupled with legal and regulatory safeguards against coercion and reprisal, as well as the guarding of employee confidentiality, the system offers substantial employee protection. OPM's Federal FLSA compliance and complaint system parallels the basic outlines of Department of Labor practice; that is, an employee alleging an FLSA violation has a right to file a complaint directly with the OPM. OPM will require the agency to correct any violation brought to its attention and substantiated by the facts. Corrective action ordered will include payment of retroactive wages, assurance of future compliance and other necessary or appropriate actions.

The law itself also establishes the right of an employee to bring action in a U.S. district court either directly or after having received the OPM decision on his/her FLSA complaint.

(2) An employee or third party may bring to OPM's attention any matter considered to be a violation of the Fair Labor Standards Act. "Third party" generally means any person or organization representing the employee. Typically, these matters would involve such things as a failure to pay proper overtime wages, including allegations that employees have been "suffered or permitted to work outside regular hours without proper compensation, in violation of the Act. OPM will also consider "equal pay" issues involving the payment of different wages to men and women for performing substantially the same work in the same establishment (in effect, a violation of classification principles); minimum wage violations, and child labor violations. However, these issues are beyond the scope of this HB.

(3) An employee who believes the FLSA has been violated may file a complaint with the appropriate OPM regional office. The regional compliance unit will investigate the complaint, requesting a written presentation from the agency. The employee will have the opportunity to review and rebut the agency presentation in writing. The compliance unit will determine if on-site investigation is necessary and conduct any such investigations, which may include review of time and attendance records, payroll records, and all other pertinent documents. Sworn statements in affidavit form will be obtained if necessary. Compliance orders will be issued if violations are found and all affected employees will be notified.

(4) OPM's FLSA complaint system maintains confidentiality for complainants unless it is impossible to do so under the circumstances. OPM makes every reasonable effort to preserve confidentiality, including expanding an investigation to cover an entire work unit from which the complaint originated. Regardless of whether confidentiality is or can be maintained, employees are protected from reprisals for filing an FLSA complaint by the FLSA itself. A reprisal is itself a violation of the Act and a violation of GSA policy, and of merit system principles.

(5) Appeals of FLSA status (exempt versus nonexempt) should include a current position description, any classification evaluation statements for the position, and a statement from the personnel office on the rationale it used for its determination. GSA personnel offices must provide employees with these documents upon request whether in connection with an appeal to OPM or within GSA.

(6) In considering claims for back pay, OPM follows GAO case law in using the same standard of evidence as GAO's Claims Division. The burden of proof is initially on the employee to prove that he/she has worked overtime with sufficient evidence to show the amount and extent of work as "a matter of just and reasonable inference." At that point the burden of proof shifts to GSA as the employing agency to show the exact amount of overtime worked or to rebut the employee's evidence. (See subpar. 8f.)

(7) The statute of limitations is 6 years. Claims accrue day by day. Hence, that part of a claim more than 6 years old will be barred. Filing a claim with OPM does not stop the clock running on the statute of limitations. If a claim for back pay goes back more than 4 years, the employee should file the claim with GAO stating specifically that the claim is being adjudicated by OPM and that the purpose of the filing with GAO is solely for the purpose of tolling the statute of limitations under the Barring Act, 31 U.S.C. 3702(b). Claims so recorded with GAO will be adjudicated in the normal manner by OPM. If OPM finds the claim valid, it will order GSA to pay back pay up to 6 years from the date the claim was recorded at GAO. Note if GSA believes that OPM is wrong in its decision on the merits of the claim, GSA retains the option of asking GAO for a ruling on whether the claim is payable since it is GAO and not OPM that has final authority to rule on monetary claims made against the United States. The 4 years mentioned above is merely a guideline to ensure an adequate safety margin. However, employees may toll the statute of limitations on any claim, even a recent one, by filing with GAO.

d. Claims to the General Accounting Office.

(1) GAO, not OPM, has final authority to adjudicate claims and to render decisions on expenditure of appropriated funds. Nevertheless, in view of OPM's authority to administer the FLSA, GAO accords great weight to OPM determinations. GAO will not overturn such determinations unless they are clearly erroneous or contrary to law or regulation. GAO will consider requests from the heads of agencies, certifying or disbursing officers, and claimants or their representatives who question OPM determinations under its FLSA compliance program. The party questioning OPM's determination has the burden of proof to show that it was clearly erroneous or contrary to law or regulation. Hence GSA will generally comply with OPM determinations under the FLSA and will not resort to a decision from GAO unless there is a legitimate doubt as to the legal or factual basis of the determination (63 Comp. Gen. 546 (1984)).

(2) GAO makes its decisions on the basis of the written record only. GAO will not make an independent investigation, call witnesses, or hold a hearing. Since OPM will make an independent investigation if necessary, it is generally to the claimant's advantage to file a claim with OPM.

(3) Statute of limitations. The statute of limitations is 6 years. Under the Barring Act, every claim or demand against the United States falling under GAO's settlement authority must be received by its Claims Group within 6 years from the date it first accrued or be forever barred. Only filing with GAO will stop the clock running on the statute of limitations. Filing with an agency does not stop the clock. (Russell T. Burgess, B-195564, September 10, 1979)

(a) Entitlements to pay generally accrue day by day, as pay is earned. An old claim based on circumstances that prevailed over an extended period may be partially barred by the 6 year limitation. For instance, on July 1, 1988, an employee filed a claim covering the period from January 1, 1980, through December 31, 1986. Only that part of the claim covering July 1, 1982, through December 31, 1986, may be considered. The claim for the period from January 1, 1980, to June 30, 1983, is forever barred.

(b) Personnel offices should forward claims received 4 years after the date of their accrual through the Classification and Pay Policy Division which will send the claim to GAO's Claims Group, as provided by section 7, title 4, of GAO's Policy and Procedures Manual for Guidance of Federal Agencies. Employees should note that GAO has ruled that claims more than 6 years old must be barred even when the delay in filing is the fault of the agency and not the employee. (Jones and Short, et al., B-205282, June 15, 1982) Hence it is often to the employee's advantage to file a procedural claim with GAO simply to toll the statute of limitations while the actual claim is adjudicated by GSA or OPM. This is necessary only if the claim goes back 4 or more years.

(c) If a claim is not received within 6 years, it will not be considered on its merits. Furthermore, GAO has consistently held that it does not have any authority to waive or make any exception to the limitation. (62 Comp. Gen. 80 (1982))

(4) GAO will not consider appeals of FLSA status for which OPM is the final administrative authority. (61 Comp. Gen. 191 (1982) and B-51325, October 7, 1976)

e. Judicial review. An aggrieved employee may also file a lawsuit with a Federal district court. Unlike with administrative claims, the statute of limitations for actions at law is 2 years. However, if the lawsuit alleges a willful violation of the FLSA on the part of the employing agency, the statute of limitations is 3 years from the filing date. Remedies under a court order might

include attorneys' fees or liquidated damages, but not interest. Most lawsuits against GSA under the FLSA have been either class actions or had party plaintiffs.

f. Evidence and burden of proof. The evidence required and the burden of proof to substantiate a claim for back pay under the FLSA are as follows: Initially the employee must prove that he/she has worked overtime with sufficient evidence to show the amount and extent of work as a matter of just and reasonable inference. (Christine D. Taliaferro, B-199783, March 9, 1981) At that point the burden of proof shifts to GSA as the employing agency to show the exact amount of overtime worked or to rebut the employee's evidence. (Civilian Nurses, 61 Comp. Gen. 174)

(1) GSA cannot simply deny overtime claims on the basis of incomplete or unavailable records of wages and hours. The FLSA requires agencies to keep adequate records. Where the agency has failed to keep records, it must either rebut the employee's evidence by other means or pay the claims. Also, the Comptroller General has held that while claims against the Government must be based, if at all possible, on official records, GAO will accept other forms of evidence or documentation that meets the evidentiary standard.

(2) To understand what GAO means by the phrase "as a matter of just and reasonable inference," look at prior cases where GAO found evidence was sufficient. In Taliaferro, the claimant submitted a list transcribed from her personal calendar of the dates, times, and amounts of overtime hours. Although the supervisor could not certify the exact number of overtime hours claimed, he did state that he had no reason to doubt her veracity and recommended that the claim be paid. In Civilian Nurses, GAO accepted evidence that nurses were required to report 15 minutes prior to their scheduled shift (to provide an overlap between shifts) although time and attendance cards reflected a standard 8 hour shift. In another case, the GAO accepted "certificates" of two supervisors of a claimant to establish that the standard work program at the claimant's duty station consisted of 48 hours a week (B-134038, May 23, 1968). The common denominator in all these cases was that, despite a lack of records required of agencies under the FLSA, a just and reasonable inference could be drawn as to the amount and extent of work. In Taliaferro, the exact dates, times, and amounts could be inferred. In the other two cases, an invariable practice provided the basis for the just and reasonable inference.

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Appendix A. Required Forms

CHAPTER 12. HOURS OF DUTY

1. Scheduling work. Agencies establish work schedules for federal employees or administrative and legal reasons. Work schedules are an administrative tool to control work. They are also a legal requirement that affects personnel administration including appointments, benefits, and pay administration especially entitlements to premium pay and to leave. The concepts and technical terms introduced in this chapter are essential to understanding the policy and rules on leave and pay administration in this HB and in other GSA directives such as the GSA Administrative Manual (OAD P 5410.1). This chapter describes agency regulations and sets forth policy derived from laws codified in title 5, United States Code (5 U.S.C.) and regulations published in title 5, Code of Federal Regulations (5 CFR). Recent changes to regulations in 5 CFR require agency managers to adjust work schedules to meet changing work requirements more often than in the past. See par. 2 e. The scheduling of work is controlled by 5 U.S.C. and 5 CFR. The laws in 5 U.S.C. and the regulations in 5 CFR control Federal personnel administration including appointments, benefits, and pay and leave administration. The relationship between work schedules and premium pay under title 5 is explained in diagrams in appendix H to Book 550, FPM Supplement 990-2. Nonexempt employees may also be entitled to premium pay under the Fair Labor Standards Act (FLSA), codified in 29 U.S.C. and 29 CFR

(but for Federal employees at Part 551.5 CFR), based on hours of work as defined in the FLSA. Overtime work and travel as hours of work are defined differently in the two laws. Although this chapter points out some of the differences, the description here of the FLSA is not intended to be definitive. See ch. 11 for a full description of the FLSA.

2. Establishing workweeks and work schedules. Workweeks, work schedules, tours of duty, and the concept of regularly scheduled work form the basic structure for scheduling the work of Federal employees. Certain classes of employees are scheduled by work periods instead of by workweeks. See subpar. a.(4) below.

a. Workweeks and work periods. There are three kinds of workweek: the administrative workweek, the basic workweek, and the regularly scheduled administrative workweek.

(1) The administrative workweek is a period of 7 consecutive calendar days, designated in advance by the head of the agency. In GSA the administrative workweek runs from Sunday through Saturday. This includes employees whose daily tour of duty starts before and ends after midnight Saturday. Their administrative workweek also starts with the midnight hour of the Saturday tour and runs for the following 168 hours. Their daily tour on Saturday starts in one administrative workweek and ends in another. This is a change from previous policy whereby the start of the administrative workweek was tied to the start of the daily tour of duty for employees on unusual shifts that crossed the midnight hour, especially on Saturday. Under the old policy different employees had different administrative workweeks. Although those administrative workweeks were 168 hours long, they were not 7 consecutive calendar days, as defined in law and regulation. Also the change makes the administrative workweek primary and the regularly scheduled administrative workweek secondary as intended by regulations.

(2) The basic workweek is 40 hours for full-time employees. It includes the officially prescribed days and hours during which full-time employees are entitled to basic pay. Supervisors establish the workweek for each employee in advance of the administrative workweek by designating its specific days and hours in the work schedule of the employee. The work schedule must show which days and hours are in the basic workweek and which are for regular overtime work. For example, a supervisor could set the work schedule as Monday through Friday, 8 a.m. to 5 p.m. with a one hour meal period. The basic workweek must not extend over more than 6 of any 7 consecutive days.

(3) The regularly scheduled administrative workweek is the period within the administrative workweek during which employees are regularly scheduled to work. For full-time employees, it includes the basic workweek plus regular overtime work. For example, a supervisor could designate the work schedule as Monday through Saturday, 8 a.m. to 5 p.m. with a 1 hour meal period. For part-time employees, it includes the officially prescribed days and hours during which they are regularly scheduled to work.

(4) Neither the basic workweek nor the regularly scheduled administrative workweek can overlap the administrative workweek, Sunday through Saturday. Workweeks with nonworkdays other than Saturday and Sunday only appear to overlap the administrative workweek. For example, an employee with Thursday and Friday off may think of the weekly tour as Saturday through Wednesday with Thursday and Friday as the "weekend." It is really Sunday through Wednesday and Saturday. There is no statute or regulation that requires scheduling two consecutive days off at the end of the weekly tour of duty.

(5) When it is impractical to set a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the first 40-hours of duty within a period of not more than 6 days of the administrative workweek must be the basic workweek. A first 40-hour tour of duty is the basic workweek. The requirement for specific days and hours within the administrative workweek does not apply to this kind of tour of duty. All work performed within the first 40 hours is considered regularly scheduled work for calculating premium pay and hours of duty. Any added hours of work within the administrative workweek that are officially ordered and approved are overtime work.

(6) The basic work period for scheduling fire protection and law enforcement employees who are subject to sec. 7(k) of the FLSA is the 14 days covered by the pay period. When other employees are used for fire protection or law enforcement in emergencies, the work period is the 7 days covered by the administrative workweek (see ch. 11).

b. Regularly scheduled work. To be "regularly scheduled" work must be scheduled in advance of the administrative workweek as stated in this chapter. OPM recently changed the meaning of "regularly scheduled." Over the years, the Comptroller General had expanded the meaning of the term in settling back pay claims, interpreting "regular" to mean work that was recurring, pattern-like, or uniform in nature and ruling that, for entitlement to night pay, it must be the work rather than the employee that is regularly scheduled. The courts had made conflicting decisions where the facts were almost identical when faced with the problem of defining "regularly scheduled". On February 28, 1983, new regulations retroactively superseded these earlier decisions on the meaning of regularly scheduled work. (48 FR 3931) The regulations now made it clear that the employee rather than the work must be scheduled. (See subpar. 1e., below.) In payroll operations, the term "regular hours" means all time in pay status during the week. Regular hours can only be determined at the end of the week when it is evident which hours the employee was in a pay status and which he or she was not. The concept of regularly scheduled work is completely different from that of regular hours. Regularly scheduled work is set before the administrative workweek, regular hours are determined after the administrative workweek.

c. Tours of duty. Tour of duty means both the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that make up the employee's regularly scheduled administrative workweek. Work scheduling and pay and leave administration are done on an hourly basis even for salaried employees. Although the pay rates on the General Schedule for GS and GM employees are annual rates, their pay is calculated from an hourly rate. In effect Federal employees, whether white collar or blue collar, are hourly workers for pay and leave administration. Most types of leave can be charged in amounts as small as tenths of hours (6 minutes). The exceptions are home leave, continuation of pay, and military leave for training. For simplicity, the discussion of work schedules in this chapter uses whole and sometimes half-hours even though time and leave may be accounted for in smaller amounts.

d. Work schedules. To the maximum extent possible, under their responsibility to schedule employees to meet changing work requirements, managers and supervisors must establish work schedules that meet the criteria below:

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek for periods of not less than 1 week.

(2) The basic 40-hour workweek is scheduled for 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive. The requirement for 2 consecutive nonworkdays is met by a Saturday and Sunday weekend although the 2 nonworkdays are separated by the basic workweek, Monday through Friday. Technically Sunday is the first day of the next administrative workweek and Saturday is the last day of the current administrative workweek.

(3) The working hours in each day (the daily tour of duty) are the same.

(4) The basic daily tour of duty (nonovertime workday) is 8 hours or less.

(5) Holidays do not affect the setting of the basic workweek. In other words, supervisors must not reschedule an employee either to deny or to confer holiday benefits or to shift work from a holiday to a day outside the basic workweek (one of the employee's usual days off).

(6) Unpaid breaks in working hours of more than 1 hour may not be scheduled in a basic workday. This means meal periods, not "rest periods" (see subpar. (7) below). The lunch period is usually one-half hour, but it can be as long as one hour. An employee with the usual unpaid meal period of one-half hour might have a daily tour of duty from 8 a.m. to 4:30 p.m. An employee with a one-hour unpaid meal period might have a daily tour of duty from 8 a.m. to 5 p.m. The upper limit of one hour was written into law to protect the employee in operations with distinct peaks in the morning and afternoon and a slack time of several hours. An unpaid break of several hours would be convenient for the employer, but it would exploit the employee. Establishing part-time jobs or overlapping shifts is permitted in such situations. The unpaid break must not be taken within the first or the last hour of the basic daily tour of duty. This is to prevent abuse by the employee of the unpaid break. Continuous duty employees like Federal Protective Officers do not take a real meal break. Their daily tour of duty is 8 hours. Uncommon

tours of duty appear to contradict this rule, but really don't. For example a shift employee on a tour of 11 p.m. to 7:30 a.m. Monday through Friday on each calendar day first works 7 hours, from midnight to 7:30 a.m. (including a meal period of one-half hour), and then 1 hour from 11 p.m. to midnight after a break of 16 hours. This does not violate the rule against an unpaid break of more than 1 hour. The tour is really a continuous one of 8 hours.

(7) Negotiated agreements (union contracts) sometimes provide for paid breaks or "rest periods" during the workday. Typically there are two breaks of 15 minutes each, one in the morning and one in the afternoon. Paid breaks may not be combined with the unpaid meal period nor taken at the beginning or end of the workday (B-190011, December 30, 1977). Employees may not save breaks from the morning to the afternoon or from one day to the next.

(8) Opening and closing hours. Regional administrators may set the opening and closing hours of regional operating activities, but the opening and closing hours of the regional headquarters may be changed only with the approval of the Administrator. In metropolitan Washington, DC, opening and closing hours in different agencies are staggered to improve traffic flow during rush hours. Approval of the Commissioner, Public Buildings Service (P) is needed in setting or adjusting opening and closing hours when the change affects 50 or more employees within 3 months. For lesser changes, authority delegated to the Associate Administrator for Administration. Since the authority may be further delegated, users of this HB should check current delegations of authority. The delegated authority applies to the Central Office and the National Capital Region and within the bands of 7:00 to 9:30 a.m. and 3:30 to 6:00 p.m. when the proposed change affects fewer than 50 employees.

(9) Grouping nonworkdays. In shift operations supervisors and managers may group nonworkdays to provide more than 2 nonworkdays in a row, for instance by scheduling days off on the last 2 days of one week and the first 2 days of the next. This should be done only when it serves the needs of the activity and the desires of the employees.

(10) Rotating shifts. Rotation in this sense means periodic changes in the basic workweek by scheduling two or more employees to take turns working each of 2 or more shifts on specified days. The cycle of rotation may vary from a few days to several weeks. For example, a telephone operator may work the first shift on Tuesday, Wednesday, and Thursday then rotate to the second shift on Friday and Saturday. The following week the telephone operator might work the second shift on Sunday through Thursday. As another example, a maintenance electrician might be scheduled to work Sunday through Thursday for 4 consecutive weeks and work Tuesday through Saturday every fifth week.

(a) The rotation must be planned so that the changeover will not add or drop a workday from an employee's regularly scheduled administrative workweek. In other words the number of workdays in any administrative workweek must be the same. There is no authority for excusing an employee on administrative leave because otherwise two employees would cover the same shift on the day the new schedules go into effect.

(b) Experience has shown that frequent rotation between night and day shifts impairs the health of employees, decreases productivity, and increases the chance of accidents. The employees need several weeks to adjust fully to the change. The adjustment is easier when the rotation is to a later work schedule; that is from first to second, from second to third and from third to first. Reverse rotation, from third to second or second to first should be avoided.

(11) Regional administrators may establish a regularly scheduled administrative workweek of more than 40 hours for protective and custodial employees who, because of their work, must be at their posts of duty for continuous periods of more than 8 hours. All such regularly scheduled duty must be performed within 6 of any 7 consecutive days.

(12) In operating activities with uncommon tours of duty, supervisors and managers should establish work schedules covering periods of reasonable length such as a month or a pay period, but in no case less than an administrative workweek. The work schedules must be established before the beginning of the first administrative workweek covered by the schedule. Timely posting of the schedule in the work area gives sufficient notice, but employees who may not see the schedule in time should be notified individually.

(13) Tour of duty of minors. Laws of the States and the District of Columbia regulating the hours of duty of minors do not apply to minors employed by the Federal Government. Nevertheless, GSA will follow local standards for setting hours of duty of minors as if they did apply.

(14) Standby duty. Employees in occupations like fire fighting may have to stay at their duty stations on regularly scheduled standby duty, making their daily tours longer than ordinary. These employees have uncommon tours of 120 or 144 hours per work period (pay period). They earn annual premium pay for this, a percentage of their basic pay that takes the place of any other premium pay except pay for irregular or occasional overtime work. The percentage is based on the number of hours of actual work, the number of hours in standby status or within the confines of the duty station, and how much they work at night, on Sundays, or on holidays, or on work schedules longer than 40 hours in a week. (The formulas for determining the percent rates are beyond the scope of this HB. See 5 CFR 550.144.) Requirements for a work schedule that includes standby duty are:

(a) The employee must be required to remain at or within the confines of the duty station as a regular part of the job. The requirement must not be occasional, irregular, or for a brief period. Generally it lasts at least a few months.

(b) The need must be clear and the employee must be officially ordered to remain at the station. Remaining at the station must not be merely voluntary, desirable, or the result of geographic isolation, or solely because the employee lives on the grounds.

(c) The hours covered must be included in the employee's tour of duty. Employees must be scheduled for standby duty before the beginning of the first administrative workweek that the employee is required to stand by.

(d) The requirement must be related to the employee's regularly assigned duties, either as a continuation of regular work which includes standby time, or as a requirement to stand by his or her post, ready to perform regular duties if the need arises.

(e) A substantial part—at least 25 percent—of the entire tour is spent standing by. The standby duty may occur throughout the weekly tour or on certain days not included in the basic workweek.

(f) While on standby the employee need not work, but is free to eat, sleep, read, listen to the radio, etc. Actual work is different from standby status in that when the employee is working, his or her full attention is devoted to the work even though the work may not require constant activity. A guard at a post or a technician continuously observing instruments are doing the actual work of their positions.

(g) The employee's duty station may mean either the regular duty station or quarters provided by GSA that are not the employee's regular quarters but are provided for employees so they may stand by, ready to perform actual work when the need arises. The employee's regular living quarters may be the duty station only when the employee's whereabouts are narrowly limited and the employee must be ready to answer service calls. The employee's quarters are not the duty station when the employee is subject to call outside the tour of duty but may leave his or her quarters provided the employee arranges for someone else to respond to calls or leaves a telephone number where he or she can be reached.

(h) Employees may be authorized annual premium pay only when the annual premium pay would be more than premium pay otherwise payable for the hours of actual work customarily required. Standby time during which no work is done is not used in the comparison. Annual premium pay must also be less than the premium pay otherwise payable for the hours of duty including standby time. Both parties benefit; the Government by paying less than for all hours including standby hours and the employee from getting more than pay for just the hours



of actual work. The decision following this rule must be based on a period that reflects the full cycle of the employee's duties and the conditions of the position.

(15) Administratively uncontrollable overtime (AUO). Employees in positions that require a substantial amount of irregular or occasional overtime duty, for example, criminal investigators, may be authorized premium pay on an annual basis for administratively uncontrollable overtime. The overtime is "uncontrollable" because the employees are generally responsible for recognizing, without supervision, circumstances that require them to remain on duty.

(a) Criminal investigators' jobs are an example of where circumstances make overtime uncontrollable. An investigator may have to shadow suspects, meet informers, make arrests, and interview witnesses. The hours devoted to these tasks cannot be controlled by additional hiring, rescheduling hours of duty, or granting compensatory time off to offset overtime hours worked.

(b) The responsibility of the employee to remain on overtime duty must be definite, official, and a special requirement of the position. The reason the employee remains on duty must be so related to the duties that failure to carry on would be negligence. The requirement that the employee must recognize when to remain on duty does not include such clear-cut instances as staying on because a relief failed to report on time. Callback overtime work also does not meet the requirement that the work be such that the employee has to recognize when to continue.

(c) The employee must have no choice as to when or where to perform the work beyond a full daily tour of duty. If the employee has the choice of taking work home, doing it in the office, or continuing it beyond the daily tour of duty, or later in the evening, the overtime is controllable and is not covered by AUO.

(d) Annual premium pay for AUO runs from 10 to 25 percent of basic pay (up to a maximum rate equal to that for GS-10, step 1) and takes the place of premium pay for irregular or occasional overtime duty. Employees who get AUO may not earn or take compensatory time for irregular or occasional overtime work. They are still eligible for other premium pay and should be scheduled for regular overtime work and for night, holiday, and Sunday work as stated in this chapter. They are also eligible for religious compensatory time as described in subpar. 3a. See 5 CFR 550.154 for calculating rates.

(e) Employee may be put on AUO only if annual premium pay would be less than the premium pay otherwise payable for the hours of work required exclusive of regular overtime work.

(f) The irregular or occasional overtime required must be substantial, averaging at least 3 hours a week. It generally happens more than once a week and the supervisor must expect that it will continue for some time.

(16) Avoiding overtime. The high cost of overtime is a matter of serious concern. Supervisors and managers should generally try to avoid overtime. Emergencies, peak workload, sudden deadlines, and the responsibility to schedule work to meet work requirements, may make overtime unavoidable in the short run. In the long run, continued use of overtime indicates a larger problem such as insufficient staff to perform assigned work, too many emergency requests for services by customer agencies, or possibly poor management and supervision. The need for overtime can be reduced by the following practices:

(a) In operations with round-the-clock or continuous work requirements, supervisors and managers should fix shift hours to avoid overtime except to fill in for absent employees. When possible, the time for starting and ending shifts should be set to overlap shift changes without requiring overtime. (See also par. 6, on preshift and postshift activity.)

(b) When costly equipment or facilities such as are used in ADP units operate for more than 8 hours a day, supervisors and managers should assign employees to shifts if possible.

(c) When GSA must provide services to other agencies or to the public for more than 40 hours per week, supervisors and managers should schedule overlapping shifts. In small operations with only one employee available to serve other agencies or the public, extensions in working hours for the convenience of customers should be kept to a minimum.

e. Scheduling work to meet actual work requirements.

(1) Each employee's regularly scheduled administrative workweek must correspond to actual work requirements. When managers and supervisors know in advance of an administrative workweek that the days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, the manager or supervisor must reschedule the employee's regularly scheduled administrative workweek to correspond to those specific days and hours. Depending on what the actual work requirements are, the supervisor may change the basic workweek to different days and/or hours or schedule regular overtime. Hours over 8 in a day or over 40 in a week that are scheduled in advance of the administrative workweek are regular overtime hours. (Overtime must still be approved in accordance with par. 4). The regularly scheduled administrative workweek includes the basic workweek and regular overtime. The change must be recorded on the T&A form. (In some cases, other regulations may call for changing the employee from part-time to full-time or from part-time to intermittent or vice-versa.) For example, during the last stages of budget formulation, a supervisor may schedule a budget analyst to work overtime including hours for which night pay is paid (between 6 p.m. and 6 a.m.). The employee is entitled to night pay because night work was done during the employee's regularly scheduled administrative workweek. In other words, the work during night hours was regularly scheduled work. (Employees are not entitled to night pay for work during night hours that is not regularly scheduled.) A supervisor might schedule a typist for the same number of hours but beginning later in the day, for example 11:30 a.m. to 8 p.m. (instead of the normal tour or 8:00 a.m. to 4:30 p.m.), when the actual work requirement is to type up the transcript of a morning conference and the typist is not needed before 11:30. If the typist were needed at the start of the day, the supervisor should extend the daily tour of duty (schedule overtime), making it 8:00 a.m. to 8:00 p.m. (See par. 4 for procedures on authorizing overtime.)

(2) Employees' work schedules could change many times during the year. In principle they could change every week. Managers and supervisors have to schedule work to correspond with an employees' actual work requirements. If, through administrative inertia, they do not actively schedule and reschedule their employees, the employees may make successful back pay claims against the United States (either to GSA or the Comptroller General). Legitimate reasons for not rescheduling employees are that the manager or supervisor did not know of the work requirement in advance of the administrative workweek and/or could not determine which employees had to be scheduled or rescheduled to meet the specific days and hours of the work requirement. See also instructions in subpar. (3) on temporary changes during the regularly scheduled administrative workweek.

(3) Managers and supervisors must schedule or reschedule employees even when they cannot give 72 hours notice of the change. Our negotiated agreements (union contracts) require notice "whenever possible" to employees at least 72 hours before the beginning of the first calendar week affected by the change. If an actual work requirement arises less than 72 hours before the start of the week, the rule about scheduling work in accordance with actual work requirements applies and not the requirement for 72 hours notice. In such instances 72 hours' notice is not considered possible.

(4) Temporary assignment to a different daily tour of duty. A temporary assignment is a change in a daily tour of duty made during the employee's regularly scheduled administrative workweek. The hours in the employee's daily tour are different, but the number of hours in the daily tour is unchanged. The employee is entitled to night pay for work at night if the work is part of the daily tour of duty either by a temporary change during the administrative workweek or by being scheduled in advance of the administrative workweek. Both count as regularly scheduled work.

(a) When employees have to work at night, supervisors and managers may request authority for overtime for added hours of work, or they may temporarily change the employee's daily tour of duty. A temporary change during the week is different fringe a period of irregular and occasional overtime work during the week because the overtime work is in addition to the employee's regularly scheduled administrative workweek. The point of the difference is that an employee is not entitled to night pay for irregular or occasional overtime work at night.

(b) To distinguish between temporary duty at night and periods of irregular or occasional overtime at night, supervisors must indicate on the T&A form that the tour of duty was changed during the administrative workweek.

(c) This rule about temporary changes during the administrative workweek applies only if the work requirement could not have been scheduled in advance of the administrative workweek. If the manager or supervisor knows of the work requirement before the administrative workweek and can determine which employees should be scheduled or rescheduled to meet the days and hours of the work requirement, then the employee or employees should be scheduled in advance to work at night, either by changing the hours in the daily tour with-out adding to then, or by extending the daily tour for that day. Extended hours (over 8 in a day) count as regular overtime work instead of irregular and occasional overtime work. In either case night work earns night pay.

3. Adjusting work schedules. Besides the requirement in par. 2e. above to schedule work according to actual work requirements, supervisors and managers may adjust work schedules to accommodate religious observances, or the individual needs of employees. These needs include the health of the employee or of a member of the immediate family, or to permit employees to take courses in nearby colleges, universities, or other educational institutions that will better equip them, for work in GSA or for other reasons described below. See par. 9 for when part-time, seasonal, on-call, and intermittent employees must have an SF 50, Notice of Personnel Action for a Change in Work Schedule (NOAC 781) or Change in Hours (NOAC 782).

a. Adjustment for religious observances. Two kinds of adjustments may be made to provide time off for observances, normal adjustments and compensatory overtime adjustments. Supervisors and managers may change the hours of the daily tour of duty so that employees start earlier and leave earlier, allowing the employee for example to avoid work or travel after sunset, the beginning of the Jewish Sabbath. There are no special rules governing normal adjustments. Employees may also request annual leave or leave without pay (LWOP) to take time off for religious observances.

(1) Employees may choose to work compensatory overtime and take an equal amount of time off without charge to leave or loss of pay when their religious beliefs require them to abstain from work during certain periods of the workday or workweek. An employee who works overtime for this reason is granted an equal amount of compensatory time off (hour by hour) from his or her scheduled tour of duty. The employee may put in compensatory overtime either before or after the compensatory time off. Advanced compensatory time off should be repaid by an equal amount of compensatory overtime within a reasonable period of time, normally 4 pay periods.

(2) Supervisors and managers may disapprove an employee's choice to work compensatory overtime to meet religious obligations when it interferes with the agency's mission.

(3) Compensatory overtime and compensatory time off for religious observances follow special rules under 5 U.S.C. 5550 a. The rules supersede agency regulations and other laws on earning and using compensatory time (see par 4) as well as those applying to overtime such as the FLSA.

b. Adjustments for educational purposes.

(1) Supervisors and managers may adjust work schedules to enable employees to take courses on their own time at colleges, universities, and other educational institutions. These are courses that are not essential to their work but will equip them for more effective work in GSA. Time spent in the courses is outside the employee's regularly scheduled 40-hour workweek. It does not count as official time. This is in contrast to courses taken under the Government Employees Training Act that are directly related to the work of the agency. Time spent in courses that the Government pays for is usually part of the employee's workweek. (Training during overtime hours is usually not compensable. See par 4e.) Some negotiated agreements (union contracts) also provide for excused absence for educational purposes.

(2) Duty hours must not be rescheduled if it leads to added premium pay (such as overtime or night pay) for someone to supervise the employee in the new schedule.

(3) Supervisors and managers may adjust work schedules even when the rescheduling includes hours or days normally compensated by premium pay such as night or Sunday pay, but not overtime pay. However the employee is not paid premium pay when the rescheduling is done to enable the employee to attend school. When there is a regularly scheduled shift that pays night differential, and the employee is assigned to that shift so as to be able to attend school, premium pay is payable because the rescheduling is not done simply for the benefit of the employee.

(4) Supervisors and managers may not, for educational purposes, reschedule an employee to work over 8 hours in a day. Unlike night or Sunday pay, there is no legal basis for denying overtime pay to an employee scheduled to work over 8 hours a day. This rule does not apply when the employee is rescheduled to a regular shift that requires overtime, such as a weekly tour of four 10-hour days not covered by the alternative work schedule program (AWS). (B-160465, March 9, 1967) (See also par. 7)

c. Exchanging shift hours. Supervisors may authorize employees to exchange shift hours with one another. Exchanges require a written request and must be acceptable to all parties. No employee may, as a result of such a switch, work more hours in an administrative workday or workweek than the employee would work without the switch. Exchanges, that is the new work schedules, must be noted on the T&A form. A change made before the start of the administrative workweek is a change to the employee's regularly scheduled administrative workweek. A change made during the administrative workweek is a temporary assignment as described in subpar. 2.e.(3).

d. Accommodating travel within the regularly scheduled administrative workweek. Generally officials ordering travel should schedule travel during the employee's usual basic workweek. This follows from the statutory policy at 5 U.S.C. 6101(b)(2) calling for scheduling travel, to the maximum extent practicable, within the regularly scheduled administrative workweek. In the Senate committee report on the Federal Salary Act of 1967, this policy was described as: An employee should not be required to travel on his or her off day in order to be at work at a temporary duty station early Monday morning to attend a meeting. It is an imposition upon his or her private life that should not be made. Nevertheless, pay for travel status should not be made so attractive that employees would seek to travel on their off days in order to receive overtime pay. Proper scheduling and administrative planning is the answer to the problems of travel pay in many cases. When emergencies occur or when events cannot be controlled realistically by those in authority, travel time must be paid for.

(1) 2-day per diem rule. Travel should not be scheduled so as to violate the 2-day per diem rule. The rule provides that where scheduling to permit travel within normal duty hours would mean paying 2 days or more of per diem, the employee may be required to travel on his or her own time rather than on official time (55 Comp. Gen. 590, 591 (1975)). Thus an employee working Monday through Friday may not schedule travel on Friday to be at a distant city on Monday or delay return travel from Friday to Monday simply to travel on official time and avoid traveling on personal time.

(2) However, the 2-day per diem rule does not apply when an employee's travel is extended by 2 or more days, not due to a desire to avoid traveling on nonworkdays or the desire of the official ordering travel to avoid imposing on the employee, but rather due to a Government decision that it would be cost effective to extend the employee's travel time instead of requiring weekend overtime work. Overtime work means work such as driving a truck over the weekend. When the employee's travel time is extended for the advantage of the Government rather than for the employee's convenience, the 2-day per diem rule does not apply (63 Comp. Gen. 268 (1984)).

(3) The 2-day per diem rule controls the timing of the travel but does not prevent the supervisor from changing the employee's regularly scheduled administrative workweek to bring travel within official hours. When supervisors and managers know of the travel requirement in advance of the administrative workweek, they can and should change an employee's weekly tour of duty to bring travel within the employee's basic workweek. For instance, an FLSA exempt employee is ordered to fly across the country on Sunday to be at a meeting on Monday morning. The supervisor may adjust the employee's work schedule to Sunday through Thursday instead of Monday through Friday. The new schedule can be set to accommodate the hours of travel. For instance for travel on Sunday afternoon the supervisor can establish the weekly tour of duty as Sunday 12 noon to 8:30 p.m. and Monday through Thursday 8 a.m. to 4:30 p.m. The employee still works 40 hours and does not get overtime. If an employee has to be in a distant city Wednesday morning but the plane does not take off till late afternoon, the supervisor may change the tour of duty to accommodate it, for instance a daily tour of duty on Tuesday of 2 p.m. to 10:30 p.m. The examples above assume that time in travel status would be 8 hours. If travel time (not counting the trip between airports and downtown hotels) is much less, say 4 hours, the employee's weekly tour of duty would cover 6 days, for instance 4 hours on Sunday and Friday and 8 hours Monday through Thursday for a total of 40 hours. "Time in travel status" (subpar. 5a.) is calculated the same as fractional days for per diem subsistence allowances in travel regulations.

(4) Changing the weekly tour to cover part or all of a Sunday requires paying Sunday pay for up to 8 hours of travel time on Sunday that counts as official time. Travel time at night that counts as hours of duty entitles the employee to night pay or night shift differential. The mere fact that the employee earns Sunday premium pay or night pay does not prevent the supervisor from changing the weekly tour of duty. Although the tour may be shifted to Sunday or night hours, the tour of duty may not be extended so as to require overtime pay for travel.

(5) Most cases of travel outside regularly scheduled administrative workweek can be avoided by such practices as scheduling conferences and meetings on Tuesday, Wednesday, and Thursday, leaving Monday and Friday for travel time. In other cases when the travel cannot be rescheduled, the employee's work schedule can be changed to bring the travel with the employee's regularly scheduled administrative workweek. GSA policy is that when time in travel status would be more than one hour, the supervisor should make every effort to schedule travel within the employee's regularly scheduled administrative workweek either by rescheduling the travel or by adjusting the work schedule to bring the time in travel status within regularly scheduled administrative-workweek. However unpaid time in travel status of less than one hour is such a minor imposition on the employee that supervisors should not feel obliged by the policy to reschedule the employee. Occasionally for sound reasons, employees must travel outside their regularly scheduled administrative workweek. Hence the policy in GSA is that supervisors must have discretionary authority to scheduled travel outside an employee's regularly scheduled administrative workweek.

(6) Supervisors who decline to change the weekly tour of duty or to schedule travel within the normal tour must record the reasons for ordering travel outside official hours by a memorandum to the record and must provide a copy to the employee upon request. Whether the supervisor schedules travel outside the normal tour or does not change the weekly tour of duty to cover the travel time, the employee is not justified in refusing to travel. It does not matter that the time is also not compensable as overtime under subpar. 5b. Refusing a proper order to travel is insubordination (51 Comp. Gen. 727 (1972)).

(7) The statutory policy is to schedule travel during an employee's regularly scheduled administrative workweek but that policy is not a mandatory requirement. The obligation to change the tour of duty to meet the employee's actual work requirements at 5 CFR 610.121 (subpar. 2e.) reinforces the policy at 5 U.S.C. 6101(b)(2) but does not force the agency to make this kind of change or give the employee an enforceable entitlement to such changes in the weekly tour of duty. The policy does not itself require or permit the payment of compensation for travel outside an employee's regularly scheduled administrative workweek. Any entitlements employees have arise under other provisions of law. However, routine refusal to change the weekly tour of duty simply because of Sunday pay or night pay or because the employee would absent on a normal work day (because of a change in the weekly tour of duty) would defeat the purpose of the statute and may be an abuse of discretion. The Congress intended that agencies avoid imposing on employees even where some added cost is involved. Added per diem costs no greater than 1-3/4 days are costs agencies may reasonably incur to avoid imposing on their employees. (56 Comp. Gen. 847 (1977))

(8) Travel outside the regularly scheduled administrative workweek is usually not compensable under title 5, but may be under the FLSA. (See ch. 11.) Employees may be entitled to overtime for travel outside their regularly scheduled administrative workweek under one of the exceptions at 5 U.S.C. 5543(b)(2)(B). See subpar. 5c, below.

(9) Congress has not provided a remedy when an employee travels on a nonworkday but the circumstances of the travel do not fall within one of the narrow exceptions. This may seem unfair but it should be viewed in the light of the policy to schedule work during the regularly scheduled administrative workweek (B-172671, April 21, 1976, B-163654, January 21, 1974, and 57 Comp. Gen. 43, 50 (1977)).

e. Special justification. Heads of Central Office Services and Staff Offices and Regional Administrators or their designees, may modify the working hours of individual employees when it is in the interest of GSA or for good reason to accommodate an employee. Among these are child care responsibilities and public transportation schedules. The work of the agency must not be impeded. When the justification is the health of an employee or of a member of the immediate family, it must be supported by a physician's certificate explaining how the connection between an adjusted work schedule and the health of the employee or family member. The modification of working hours in such an instance is normally temporary, until a specified date.

f. Schedules as a reasonable accommodation to a handicap. Federal agencies may accommodate known physical and mental limitations of qualified handicapped applicants and employees. Reasonable accommodation could include part-time or modified work schedules. See FPM Chapter 306.

4. Overtime. Supervisors and managers should keep overtime to a minimum. This applies not only to overtime that is officially ordered and approved under title 5 U.S.C. but also to overtime work "suffered or permitted" by supervisors. (See chapter 11.) Overtime under 5 U.S.C. must be approved in advance by officials who have the authority to do so. In emergencies when it is impossible to get advance authorization, overtime may be permitted but only when it involves public health or safety or the requirement is so urgent as to make it clear that overtime would be approved.

a. Overtime work. Overtime work is work performed by an employee over 8 hours in a day or 40 hours in an administrative workweek. To be compensable under title 5, overtime work must be officially ordered and approved. The official ordering or approving the overtime work must be authorized to do so. In rare instances employees who were not actually ordered to perform overtime may nevertheless have a claim for overtime pay under title 5 if they were "induced" to work overtime. The official inducing the overtime must have had authority to order and approve it. Inducement means more than tacit expectation of overtime work. The Comptroller General found employees were induced to work overtime when the very nature and volume of the work assigned required overtime and nonperformance of such work could have affected performance ratings (B-175275.05, April 7, 1976 and B-175363, November 26, 1974.)

(1) Overtime is either regular overtime work or so-called "irregular or occasional" overtime work. Regular overtime is work scheduled as part of the employee's regularly scheduled administrative workweek. Irregular or occasional overtime is overtime work outside the employee's regularly scheduled administrative workweek. "Occasional" and "irregular" have different meanings. "Occasional" means infrequent. Even though overtime work is not irregular it may be occasional. For instance, overtime work done regularly twice a year is infrequent enough to be occasional.

(2) Overtime for more than 40 hours in an administrative workweek means from Sunday through Saturday. Each administrative workweek is separate. Hence an employee whose weekly tour was changed from Monday through Friday to Sunday through Wednesday and Saturday (with Thursday and Friday off) is not entitled to overtime compensation for the first Sunday worked at the time of the schedule change merely because it was one of his or her normal days off (B-216756, February 19, 1985).

b. Title 5 overtime v. overtime under the FLSA. For historical reasons overtime under title 5 works differently from overtime under the FLSA. See Ch. 11 for a full explanation of overtime under the FLSA. This section contrasts the two laws briefly so that users of this HB will know the law that controls a particular provision. The details of calculating overtime pay are beyond

the scope of this HB, which covers only the time and leave administration aspects of overtime. Briefly the main differences (for GS employee where the contrast is clearer) are these:

(1) Under title 5, the chief characteristics of overtime are:

- (a) Overtime pay at time and one-half of basic pay,
- (b) Work must be officially ordered and approved,
- (c) Overtime hours are those over 8 hours in a day or over 40 hours in a week,
- (d) All hours in a pay status count toward the 8/40 threshold,
- (e) Compensatory time off is permitted,
- (f) Employees get a 2-hour minimum of pay for call-back duty even when they actually work less than 2 hours,
- (g) There is a maximum earnings limitation (total or aggregate pay including premium pay for any pay period may not exceed the biweekly pay for GS-15, step 10) and
- (h) A maximum rate limitation (the hourly overtime rate may not exceed that for GS 10, step 1) and
- (i) Overtime for hours of travel is very limited.

(2) Under the FLSA, the chief characteristics of overtime are:

- (a) Overtime pay at time and one-half of the so-called "regular rate,"
- (b) Work need only be suffered or permitted,
- (c) Overtime for more than 40 hours in a week but not for more than 8 hours in a day,
- (d) Only hours of actual work and not paid leave count toward the 40 hour threshold,
- (e) Compensatory time off provision limited to comp time within the same workweek. Recent amendments to the FLSA allow comp time beyond the same workweek, but they apply only to State and local governments.
- (f) No limitations on pay, and
- (g) Different criteria for hours of travel as overtime.

(3) Federal wage system employees are not subject to limits on overtime pay as are GS employees under title 5. Their overtime rate is time and one-half of their basic rate of pay which includes certain differentials not included in the basic rate of GS employees, and FWS employees do not get compensatory time off. Any overtime they work must be paid for.

c. Procedures.

(1) Each approval of overtime remains in effect for only one pay period. Thereafter the approving authority must make a new determination of essential need. Users of this HB should check the service's or staff office's delegations of authority to see who may approve overtime.

(2) Supervisors should not grant annual leave on the same day, the day before, or the day after a day for which overtime has been authorized.

(3) The official requesting overtime for his or her employee(s) should fill out GSA Form 544, Request, Authorization, and Report of Overtime (4 copies), allowing enough time for approval before the overtime is worked. See subpar. (7) below for exceptions during emergencies.

(4) All four copies should be sent through the budget officer to the approving official. (Check the service's or staff office's delegations of authority.) If funds are adequate, the budget officer should keep a copy and send the other three copies to the approving official. After approval, the copies go back to the originating office.

(5) After the overtime work is performed, the originating official must fill in the back of the form to report the overtime worked. The report must include each employee's Social Security number. If the hours of overtime worked are higher than the previously estimated hours by 10 percent or more, then the originating official must explain the reason on the form and bring it to the attention of the approving official.

(6) In emergencies, overtime work may be documented by writing EMERGENCY OVERTIME in red ink in the Remarks block of the T&A form. The originating official must follow this up as soon as possible with Form 544, but no later than 5 days after sending in the T&A form. See par. 4, above, for justifications for emergency overtime.

d. Compensatory time. Compensatory time (comp time) is time off for irregular or occasional overtime work instead of overtime pay for that work. Comp time cannot be granted for regular overtime work. Regular overtime work is overtime work scheduled in advance of the administrative workweek and ordered by an official with authority to order and approve overtime. Compensatory time shifts work from one day or week to another, but does not raise salary costs. Overtime pay for overtime work adds to costs but it also increases the amount of work done. Not everyone may be granted compensatory time. Some employees must be paid overtime pay for any irregular or occasional overtime work and others are not eligible at all for comp time. The main criterion for granting compensatory time is the status of the employee under the FLSA (29 U.S.C.) even though compensatory time itself is earned only under title 5 U.S.C. Employees are designated either exempt or nonexempt from the overtime provisions of the FLSA. Most supervisory, professional, executive and administrative employees above GS-7 are exempt. See chapter 11 for exemptions. FLSA status controls whether comp time under title 5 may be granted to employees. Whether the hours worked actually count as overtime hours under either law is decided independently. FLSA's comp time provisions apply to state and local governments but not to the Federal Government.

(1) FWS employees, regardless of FLSA status, cannot be given compensatory time off for overtime work even when they request it. A lack of funds to pay overtime to these workers is not sufficient cause for asking or permitting employees to take compensatory time off for irregular or occasional overtime. By GSA policy, alternative work schedule arrangements must not

allow for prevailing rate employees on flexible work schedule to earn compensatory time. (See subpar. 7d.(9).)

(2) Employees who get premium pay on an annual basis for administratively uncontrollable overtime (AUO) may not get compensatory time off for irregular or occasional overtime. Premium pay under 5 U.S.C. 5545(c)(2) for AUO takes the place of premium pay for irregular or occasional overtime work. Since employees who get AUO are not entitled to premium pay in the first place, they cannot substitute compensatory time for it (B-164689, March 26, 1976). The restriction does not apply to employees who get annual premium pay for standby duty under 5 U.S.C. 5545(c)(1). Their annual premium pay takes the place of all other premium pay except for irregular or occasional overtime. If otherwise eligible, they may get compensatory time off.

(3) Nonexempt employees must get overtime pay for irregular or occasional overtime work. Even if they volunteer, they may not take compensatory time off.

(4) All employees who are exempt from the overtime provisions of the FLSA may choose overtime pay or compensatory time off, regardless of their salary. It no longer matters that their rate of basic pay is above the maximum rate of GS-10. The employee's choice must be entirely voluntary. Only the form of compensation is up to the employee; the decision to order and to work overtime is not. By this new policy, all exempt employees in GSA are now treated alike, simplifying overtime administration.

(5) Certain restrictions apply to compensatory time:

(a) Employees may accumulate up to 99 hours of compensatory time. The payroll system alerts payroll clerks, who will call timekeepers when the total goes over 40 hours. The system does not automatically drop the excess. Supervisors are responsible for reviewing leave usage to enforce this requirement. Personnel officers may approve accumulations higher than 99 hours only for overwhelming reasons. Compensatory time, after all, does not increase the total hours that an employee works during the year; it merely redistributes them. Furthermore, going over 99 hours is administratively burdensome; timekeepers have to maintain local "cuff" records of excess hours, reporting to Payroll only when the total falls below the limit.

(b) Compensatory time earned will normally be taken within four pay periods after the pay period it is earned. The payroll system does not track the date when compensatory time is earned. Supervisors and timekeepers must monitor leave usage to enforce this requirement. The Agency has raised the limit from 40 to 99 hours to give greater flexibility to its managers, not to encourage greater use of overtime and compensatory time. Employees still must use any compensatory time earned before taking annual leave.

(c) An employee may not take annual leave until he or she exhausts any compensatory leave to his or her credit, except when the employee would otherwise lose annual leave at the end of the leave year.

(d) At the end of the leave year, compensatory time balances carry over to the next leave year. Unused compensatory time may no longer be converted to an overtime payment by submitting amended T&A form(s) to Payroll, except when the employee leaves the Agency such as by resignation, retirement, or transfer to another agency.

(e) Compensatory leave may not be taken in advance, in contrast to compensatory time for religious purposes, which can be taken in advance. (See subpar. 3a, above.)

(f) The maximum earnings limitation applies. This means that compensatory time may not be earned when the aggregate (or total) pay for the pay period exceeds the biweekly rate for GS-15, step 10. Aggregate (or total) pay includes the amount of overtime pay that the employee would get if compensatory time were converted to overtime pay. Other overtime provisions are figured on a weekly basis but the maximum earnings limitation applies on a pay-period basis. The earnings limitation prohibits payment of overtime and requires forfeiture of compensatory time over the limit. Gross compensatory time earned in a pay period is used to determine whether the aggregate rate of pay exceeds the maximum rate for GS-15, step 10. Net compensatory time may not be used. Thus if the employee has 15 hours over the limit in the first week of the pay period and uses 10 in the second week, all 15 hours remain over the limit and may not be compensated with either compensatory time or overtime pay (B-211286, October 2, 1984). Restrictions on earning overtime do not prevent a manager from requiring an exempt employee to work overtime without compensation.

(g) By GSA policy, flexible work schedule arrangements, including flexitour, may not provide for employees to earn comp time for regular overtime work.

(h) By GSA policy, flexible work schedule arrangements, including flexitour, may not provide for prevailing rate employees to earn comp time for overtime work.

(6) Employees may earn compensatory time only if it is approved in advance the same as other overtime, using GSA Form 544. Employees take compensatory time off the same as annual leave. (See chapter 2.) Employees may not take time off from duty using compensatory time without advance approval by the supervisor. Compensatory time off must be recorded when earned and taken.

e. Overtime for training. Hours of training outside the basic workweek usually do not count as overtime hours for pay and leave administration. Even though training extends beyond 8 hours in a day or 40 hours in a week, it is not compensable except under certain conditions (5 CFR 410.602). (Training at night, on Sunday, or a holiday is also covered there. These rules cover training by, in, or through Government facilities or non-Government facilities. Whether training counts as overtime hours does not depend on whether the employee gets travel expenses (48 Comp. Gen. 620 (1969).) Whether training counts as hours of overtime also does not depend on whether travel to the place of training counts as overtime (B-165311, November 12, 1968). For travel to training, see par. 5, below. See chapter 11 for overtime under the FLSA for training. Training counts as overtime under the following conditions:

(1) Training at night because situations the trainee must learn to handle happen only at night.

(2) Costs of training, including premium pay, are less than the cost of the same training during regular work hours.

(3) An employee earning annual premium pay may continue to earn it during a temporary assignment for training of no more than 10 consecutive workdays, subject to an annual limit of 30 workdays in a calendar year.

(4) Training when the employee is already getting overtime pay. This does not apply if the employee is assigned to full-time training at an institution of higher learning.

(5) Where premium pay is authorized as an exception to the rule by GSA under authority delegated by OPM (5 CFR 410.602(b)(6)). Users of this HB should check the delegations of authority for the service or staff office concerned.

(6) Where premium pay is authorized by OPM as an exception to the rule in response to a specific request from GSA. Users of this HB should check the delegations of authority to see whether GSA's delegated authority is enough, or if not, then to see who in GSA may make the request to OPM.

5. Travel as hours of work. Official travel during an employee's regularly scheduled administrative workweek, including regularly scheduled overtime, is hours of work under title 5. Official travel during regular overtime hours must be compensated with overtime pay. Travel within regular overtime hours cannot be offset with compensatory time. Compensatory time is only for irregular or occasional overtime work, not regular overtime work. Otherwise, time in travel status away from the official duty station is not hours of employment unless it falls under one of the four statutory exceptions described in subpar. 5a, below. The Comptroller General has interpreted the exceptions narrowly in a long series of decisions. See subpar. 5c for common situations where travel does not count under title 5 as hours of duty. See subpar. 5b and ch. 11 for time when travel counts as hours of duty under the Fair Labor Standards Act. Some travel is not

compensable, but the employee may be ordered to travel nonetheless. The Congress has not provided a remedy when travel is ordered but is not covered by 5 U.S.C. 5542(b)(2) (7 Comp. Gen. 43, 50 (1977)). Nonexempt employees may have a remedy under the Fair Labor Standards Act.

a. Ordering travel. Officials ordering travel should schedule it during the employee's usual basic workweek. For instance, instead of scheduling a meeting on Monday morning in a distant city, officials should schedule it for Tuesday morning so that an employee can travel on Monday during normal hours. (Assume that the travel does not fall under one of the four statutory exceptions.) Supervisors and managers also have authority to adjust work schedules to accommodate travel within the employee's basic workweek. In the example above, the supervisor could change the tour of duty to Sunday through Thursday. See also subpar. 3d., above. However, even an official with authority to order and approve overtime may not adjust the employee's work schedule in advance of the administrative workweek solely so that the travel falls during regular overtime hours during that adjusted weekly tour of duty. The employee may simply be ordered to travel on his or her own time.

(1) The obligation to change the tour of duty to reflect the employee's actual work requirements at 5 CFR 610.121 (see subpar. 2e)., does not force the official to make this kind of change. Travel is not an actual work requirement in that sense. (Interpreting travel as a work requirement would effectively negate 5 U.S.C. 5542(b)(2)(B) and bring virtually all travel within the regularly scheduled administrative workweek, which is not what the Congress intended.)

(2) Time in travel status. The rule on the amount of time in travel status that counts as hours of work is that an employee is in a travel status only for the hours actually spent traveling between the official duty station and the destination or between two temporary duty points and for the usual waiting time that interrupts travel. For travel by common carrier, time in travel status begins with the scheduled departure from the common carrier terminal and ends upon arrival at the terminal at the destination. Travel from place of business or home to the station or airport is not time in travel status except when that travel takes an hour or longer, but waiting time at the terminal before departure does not count. See subpar. 5c. on home to work travel. When overtime is authorized, the employee must travel by the most expeditious and economical manner. If an employee for personal reasons declines to use the mode of transportation chosen by the agency and/or travels by an indirect route for his or her convenience, then time in travel status is computed based on the mode preferred by the agency and the carrier's published schedule.

b. Travel under title 5. Travel time outside the regularly scheduled administrative workweek and away from the duty station counts as hours of duty when the travel involves performing work while traveling, is incident (related) to travel that involves performing work while traveling, is carried out under arduous conditions, or results from an event that could not be scheduled or controlled administratively (5 U.S.C. 5542(b)(2)(B)). See Book 550, Premium Pay, FPM Supplement 990-2 or the latest edition and supplements of the General Accounting Office's Civilian Personnel Law Manual for details.

(1) Performing work while traveling. This means work that can only be performed while traveling such as making astronomical observations in the infrared from a high flying aircraft, operating navigation or signaling equipment used in air or rail transport, or escorting a prisoner to a prison. Truck drivers or pilots perform work while traveling. Border Patrol agents who drive from their headquarters to checkpoints where they work 8 hours are working while traveling to the checkpoints. Escorts and couriers of the Department of Energy who protect shipments of radioactive materials during 24 hours a day travel are performing work while traveling, as are diplomatic couriers with a diplomatic pouch. See also subpar. 6c.

(2) Incident to travel that involves performing work. This means travel related to travel under (1) above. A courier's return travel after delivery is incident (or related) to travel that involves performing work while traveling. When a truck driver catches a ride to a pickup point to pick up a truck to be driven somewhere else (this is called deadheading) the deadhead ride to the pickup point is travel incident to travel that involves working while traveling. (Driving the truck from the pickup point is travel while working. Deadheading is travel incident to that travel.) By contrast when an employee travels outside his or her regularly scheduled administrative workweek to a port to board a ship to perform TDY, the travel is not incident to travel that involves the performance of work since the ship is the employee's TDY station. Travel ends when the employee boards the ship.

(3) Arduous conditions. Unusually adverse terrain or severe weather or travel to remote, barely accessible places by foot, horseback, or truck can count as arduous conditions. It is not always easy to tell whether travel is under arduous conditions. It depends on the facts in each case. The time of travel and the distance is not usually important. Hazardous conditions may help make travel arduous but do not automatically count as arduous conditions. However travel by rail or other common carrier and travel over hard surfaced roads except in unusually severe weather does not count. Driving through a high crime area on hard surfaced roads is not travel under arduous conditions. When severe weather delays travel until the storm passes and the roads are clear, travel is not under adverse conditions. Actual travel under adverse conditions is required, not merely travel delayed by severe weather.

(4) Event that could not be scheduled or controlled administratively. This exception is always interpreted narrowly. It depends on the ability of an Executive agency to control the event that requires an employee to travel and on an immediate official necessity for travel outside the employee's regularly scheduled administrative workweek. Control is assumed whether GSA has sole control or the control is through a group of agencies acting together, for instance, as when several agencies sponsor a training program or conference, or one sponsors it in the interests of all of them or when several agencies take part in an activity of mutual concern, such as a agency hearing on an aircraft accident. Travel to put out a forest fire is travel caused by an uncontrollable event. A test pilot traveled to a test site to take a snow qualification test, a test that can only be given under certain snow conditions. Since the Government cannot control the weather, the travel to ensure the pilot's presence during favorable snow conditions was travel caused by an uncontrollable event. Travel is also caused by an uncontrollable event when it results from an unforeseeable equipment breakdown, or the event is scheduled or controlled by some organization outside of Government. Relocation travel on Sunday to report to the new duty station on Monday morning is not travel that results from an uncontrollable event.

(a) Immediate official necessity. Even if the event that calls for travel is one that the Government cannot schedule, and the agency has such short notice that it cannot schedule travel during the employee's regularly scheduled administrative workweek, the employee is still not necessarily entitled to overtime pay (or comp time). There must also be an immediate official necessity, caused by the uncontrollable event, for travel outside the employee's regularly scheduled administrative workweek. For instance, a client agency required GSA to fix electrical equipment that broke down, but did not allow GSA access during the regularly scheduled administrative workweek of the repair technicians who had to travel to the site on Saturday to fix the breakdown the next day, Sunday. Although the breakdown itself was uncontrollable, the travel was not. GSA had 2 weeks' notice for the repairs. Hence there was no immediate official necessity for the travel outside regularly scheduled administrative workweek. GSA could have scheduled the travel for Friday. The one added day of per diem would not violate the 2-day per diem rule. GSA could also have scheduled the technicians that week for a basic workweek that included Saturday. The technicians did not get overtime for Saturday travel. In another case when an agency waited 4 days before sending a mechanic in response to a request for depot level maintenance, the Comptroller General found no immediate official necessity. The availability of transportation as well as the needs created by the event can be taken into account in deciding whether the need for travel is so immediate as to prevent administrative scheduling of travel during the regularly scheduled administrative workweek.

(b) Return travel. For General Schedule employees the return trip from an event that was administratively uncontrollable counts as hours of work. General schedule employees (GS and GM) no longer have to show that the return trip itself is administratively uncontrollable. Prevailing rate employees (FWS) are not covered by a change in the law effective October 12, 1984. For FWS employees the fact that outbound travel is administratively uncontrollable does not make the return trip compensable. Eventual return travel to the official duty station is assumed. Even when work itself delays return travel till after official hours, the time is not compensable. The delay changes the timing of the return travel but does not cause the return trip which would happen anyway.

(5) For any of the four conditions described above there is also a requirement that travel be officially ordered and approved by officials with authority to approve overtime. Any overtime worked under these rules counts as irregular or occasional overtime because it is outside the regularly scheduled administrative workweek. If otherwise eligible, employees may be granted compensatory time off instead of overtime pay. Employees earning annual premium pay for AUO cannot get either overtime or comp time for such travel time. Their annual premium pay takes the place of any other premium pay for irregular or occasional overtime work.

(6) Also the travel must be outside the official duty station. The official duty station is the corporate limits of the city or town or, in an unincorporated area, the reservation or station with definite boundaries within which the post of duty is found. This is equivalent to the definition in travel regulations.

c. Common situations that are not travel under title 5.

(1) Commuting time. Normal commuting time between an employee's home and duty station is not time spent in a travel status away from the duty station and is not compensable travel time. Even where an employee commutes daily from home or headquarters to assignments to perform regularly scheduled duties (auditors or inspectors for instance), travel from home and back to perform regularly scheduled duties is not such an imposition upon the employee's private life as to differ very much from a commute to a permanent duty station and is not compensable. However, for an employee in travel status, time in transit from residence directly to the destination (as by automobile) is considered time in travel status away from the official duty station. Allowable transit time has a maximum limit of the time it would have taken to go between the place of business and the destination. The intent of the Congress is clearly to avoid paying all federal employees to drive to work (Barth and Levine v. United States, 215 Ct. C1. 383 (1983)).

(2) Incidental work while traveling. Work that merely takes place during travel is not compensable. If work is neither officially ordered and approved nor such that it could only be performed while traveling, then it is incidental. In many instances an employee will transport papers, supplies, or equipment and to that extent incidentally acts as a "courier" but not to the extent needed to count as performing work while traveling. Transporting files, documents, supplies, etc. must be the employee's primary function and the reason for the travel, otherwise it is merely incidental to the travel. An attorney who returns to the office with the affidavit of a witness is only incidentally transporting papers. The time a procurement analyst takes to review contract specifications and plans on the plane while traveling to a TDY duty station is not compensable. By contrast, if in connection with travel to a hearing, an employee is required to review the transcript on the return trip, the actual time spent on that task is compensable, although not the whole return trip. Required means officially ordered and approved by an official with delegated authority to approve overtime, not just the supervisor.

d. Travel under the FLSA. See Ch. 11 for a full explanation of the rules for travel under the FLSA. This section only summarizes them to allow a comparison with title 5. The rules under the FLSA apply only to nonexempt employees. Exempt employees are not entitled to overtime under the FLSA. Travel outside normal working hours is considered compensable work only when:

(1) The employee drives a Government vehicle from home to work as a requirement of the agency.

(2) The employee travels from one job location to another within the confines of the official duty station.

(3) The employee is the driver or pilot, or assists in operating a vehicle, or is required to work while traveling.

(4) The employee is a passenger on a 1-day assignment away from the employee's official duty station.

(5) The travel occurs during hours of a nonworkday corresponding to regularly scheduled work hours of a workday, and the travel keeps the employee away overnight. It is possible for two employees to fly on the same plane where only one gets overtime under the FLSA. This happens when a nonexempt and an exempt employee travel on nonworkdays but during hours corresponding to those of the nonexempt employee. If the nonexempt employee travels outside the corresponding hours, the travel is not counted as hours of duty for overtime under the FLSA.

(6) Waiting time in terminals before departure is considered hours worked under the FLSA.

6. Preshift and postshift activity.

a. Definitions.

(1) A preshift activity is any preparatory activity that an employee performs before his or her principal activities and a postshift activity is any concluding activity that an employee performs after finishing his or her principal activities.

(2) A preliminary and postliminary activity is any preshift or postshift activity that is not closely related to the employee's principal activities and thus is not compensable as hours of work.

(3) Compensable preshift and postshift activity is preshift or postshift activity that meets the tests in subpar. 6b. to count as hours of duty under title 5. Preshift and postshift activity that is not preliminary or postliminary activity is compensable. (See also ch. 11 for entitlements under the Fair Labor Standards Act.)

(4) Principal activities are those activities that the employee is hired to perform, the duties of the position. They include all activities performed during:

(a) The employee's regularly scheduled administrative workweek including

(b) Regular overtime hours and

(c) Periods of irregular or occasional overtime work authorized under 5 CFR 550.111.

(5) Irregular or occasional overtime work is overtime work outside the employee's regularly scheduled administrative workweek. Compensable preshift and postshift activity is accounted for as periods of irregular or occasional overtime, but not all irregular and occasional overtime is for periods of preshift or postshift activity. When the employee performs principal activities, then the activity is not a preshift or postshift activity even though that activity occurs before or after the shift. Most periods of irregular or occasional overtime in fact are for principal activities.

b. Compensability of preshift and postshift activity. Time spent in preshift or postshift activity is compensable when it meets two tests: the activity is work and it involves a substantial amount of time and effort.

(1) Is the activity considered work? If the activity is required by the agency and is closely related to the employee's principal activities and is indispensable to performing them, the activity is considered work.

(2) Does the activity involve a substantial amount of time and effort? If the total time spent in the activity is more than 10 minutes per day, it is credited as hours of work. Time spent in preliminary and postliminary activity does not count toward the 10 minute minimum (because preliminary and postliminary activity is not compensable).

(3) Time spent in preliminary and postliminary activity is excluded from hours of work even when a preliminary activity comes after a compensable preshift activity and before the daily tour of duty or when a postliminary activity comes after the end of the daily tour of duty and before a compensable postshift activity.

(4) The differences between principal activities, compensable pre/postshift activities, and uncompensable pre/postliminary activities may be very narrow. Often the same activity is compensable in one job but not in another. It depends on what job the employee was hired to do during regularly scheduled administrative workweek. For example, sharpening knives before the daily tour of duty is a principal activity for someone hired to sharpen knives, a compensable preshift activity for a butcher, and a preliminary activity for a job analyst in the personnel office at the meat packing plant. Just where an activity falls in the range from principal to pre/postliminary activity depends on the facts and circumstances of each job.

(5) Examples of preshift and postshift activities found by courts to be so closely related to principal activities as to count as work are changing clothes and showering in a battery plant that used caustic and toxic materials extensively, sharpening knives in a meat packing plant, and, in the past, FPO's drawing and turning in Government-owned weapons and equipment at control points or changing into and out of uniforms at locker stations. See 53 Comp. Gen. 489 (1974) and 54 Comp. Gen. 11 (1974) for restrictions.

(6) Examples of preliminary and postliminary activities performed before or after the scheduled tour of duty are walking, riding, or traveling to and from the place where principal activities are performed, within the plant, mine, building or other place of employment regardless of whether it is on the employer's premises or before or after checkout, punching in or out, waiting in line to check in or out, checking an assignment board, opening doors and turning on lights and beat, washing up and showering, waiting in line for paychecks. None of this is compensable. Changing clothes even for employees in unusual jobs like in a carbon paper plant and an automotive body shop where their clothing may be heavily soiled at the end of the day, is work only when changing clothes is indispensable to the principal activities, and where it is required by law, by rule of the employer, or by the nature of the work. An astronaut works when he or she puts on or takes off a spacesuit.

(7) Examples of principal activities performed before or after the scheduled tour of duty are oiling, greasing, or cleaning a lathe or installing a cutting tool by a lathe operator at the start of the workday; loading material onto trucks, fueling trucks, picking up electrical plans, and checking job locations by electricians and helpers; reporting for roll call 15 minutes before the stated tour of duty by guards to get assignments and instructions.

c. Crediting time spent in preshift and postshift activity. When the supervisor foresees that time spent on a preshift or postshift activity is creditable as hours of work, the supervisor must schedule the time during which the employee will perform, the work. The work can be scheduled within the employee's daily tour of duty or outside it. When it is scheduled within the daily tour, the employee gets no added time credited to hours of work (overtime). When it is scheduled outside the daily tour (or partly in and out), the employee gets credit for the added time (the whole or part outside the daily tour of duty). The administrative procedures for crediting periods of irregular or occasional overtime work must be followed. Compensable preshift and postshift activity is overtime work that is outside the employee's regularly scheduled administrative workweek.

7. Alternative work schedules (AWS). With the enactment of Pub. L. 99-196 on December 23, 1985 alternative work schedules became a permanent part of Federal personnel administration. AWS programs allow flexibility in controlling the workforce. This HB is not intended as a comprehensive guide for Regional Administrators and HSSO's in planning AWS programs. Instead it sets basic policy for AWS. For detailed guidelines, planners should check Book 620, FPM Supplement 990-2 and consult their personnel offices. This HB does not describe the various AWS programs which are explained in local directives or in national or local labor agreements. Instead, the discussion here is to help supervisors and employees understand the implications of AWS for day-to-day time and leave administration.

#### a. Definitions.

(1) Alternative work schedules (AWS) Flexible and compressed work schedules established under the provisions of Pub. L. 99-196 and 5 U.S.C. 6120 et seq. are collectively known as alternative work schedules.

(2) Basic work requirement means the number of hours excluding overtime hours that an employee is required to work or to account for by approved leave. It may be on a daily, weekly, and/or biweekly basis, depending on the type of AWS.

(3) Compressed schedule means an 80-hour, biweekly work requirement scheduled for less than 10 workdays, in the case of a full time employee. For part-timers it means a biweekly work requirement of less than 80 hours scheduled for less than 10 days.

(4) Core time means the hours and days during the biweekly pay period when an employee on a flexible schedule must be present for work. Core time includes the unpaid meal period when the employee may be away from work. Usually the meal period is restricted to certain hours within the core time. Thus core time from 9 a.m. to 3 p.m. might include a period between 11:30 a.m. and 1:30 p.m. during which employees must take their unpaid meal breaks.

(5) Credit hours means any hours within a flexible schedule that are over an employee's basic work requirement and which the employee chooses to work so as to vary the length of a workweek or workday.

(6) Flexible time means that part of the working hours during which employees may choose their time of arrival and departure, within limits set by the controlling directive or agreement.

(7) Flexitime means a system of work scheduling that splits the workday into two distinct kinds of time—core time and flexible time. Under flexitime the employee must be at work during core time and the employee must account for the total number of hours he or she is scheduled to work.

(8) Gliding schedule means a flexible schedule in which an employee has a basic work requirement of 8 hours a day and 40 hours a week, and may select an arrival time each day and may change that arrival time daily as long as it is within the established flexible time band.

(9) Maxiflex schedule means a flexible schedule with core time bands on fewer than 10 workdays in a biweekly pay period and with a basic work requirement of 80 hours for the pay period, but an employee may vary the number of hours worked on a given workday or the number of hours per week, within the limits of the AWS program.

(10) Official hours of work are the standard office hours established in the regions and in central office.

(11) Overtime hours (in a flexible schedule) means all hours over 8 in a day or 40 in a week that are officially ordered in advance, but does not include credit hours.

(12) Overtime hours (in a compressed schedule) means any hours over those specified in the compressed work schedule.

(13) Variable day schedule means a flexible schedule with core time on each workday in the week and with a basic work requirement of 40 hours in each week of the biweekly pay period, but an employee may vary the number of hours worked on a given workday within the week, within the limits of the AWS program.



(14) Variable week schedule means a flexible schedule with core time on each workday in the biweekly pay period and with a basic work requirement of 80 hours for the biweekly pay period, but an employee may vary the number of hours worked on a given workday or the number of hours each week, within the limits of the AWS program.

b. Basic policy. Alternative work schedules can improve productivity or public service, but they are not suitable for all employees in all organizations. The mission of GSA must take priority over the personal preferences of employees. AWS programs should be periodically reviewed for possible adverse impact. Starting or ending AWS programs is subject to agency obligations under the Federal labor management relations program. Managers and supervisors retain the right to require employees or groups of employees to go off alternative schedules to meet agency needs. Even under AWS, supervisors have a responsibility to adjust work schedules to meet actual work requirements, as described above in subpar. 2e. AWS programs should include provisions for adequate supervision of employees during expanded hours, for designating in writing key employees whose jobs will have individual schedules, and for approved systems of recording hours worked. AWS programs should be voluntary, without any hint of coercion of employees under flexible schedules to choose times of arrival or departure, work or not work credit hours, or to ask for or not ask for compensatory time off instead of overtime pay for overtime work.

c. Compressed work schedules. Employees on compressed schedules have fixed tours of duty.

(1) Tour of duty. The tour of duty is defined by the schedule established for the employee such as 5-4/9 or 4/10. The tour of duty is the same as the basic work requirement.

(2) Overtime. Overtime hours means any hours over those that make up the compressed schedule. For an employee working 10 hours a day, 4 days a week, overtime means any hours over 10 in a day or 40 in a week. For an employee on a 5-4/9 schedule, it means any hours over those scheduled for that day (9 or 8) or more than the number of hours scheduled in that administrative workweek, for instance 45 or 35.

(3) Sunday hours for Sunday premium pay include the entire daily tour of duty whether 10, 9, or 8 hours.

(4) Holidays.

(a) An employee who works on a holiday is entitled to holiday premium pay for the hours worked up to the number of hours in that daily tour of duty, for instance 9 or 8. Work over the daily tour counts as overtime hours not holiday hours worked.

(b) An employee is excused on a holiday without charge to leave or loss of pay for the entire daily tour, whether 10, 9, or 8 hours.

(c) When an employee has three consecutive nonworkdays and the holiday falls on one of those nonworkdays, the day off in place of the holiday (the in-lieu of holiday) is designated according to the following rules: when the holiday falls on the employee's first or second nonworkday the preceding workday is the in-lieu of holiday and when the holiday falls on the third nonworkday it is the following workday.

(d) When an employee has four consecutive nonworkdays and the holiday falls on one of the nonworkdays, the rule for the day off in place of the holiday (the in-lieu of holiday) is: when the holiday falls on the employee's first or second nonworkday the preceding workday is the in-lieu of holiday and when the holiday falls on the third or fourth nonworkday it is the following workday.

(e) A part-time employee is entitled to holiday pay only for work performed during his or her/her compressed schedule on a holiday. A part-time employee earns basic pay but not holiday premium pay for work on a in-lieu of holiday. When the work place is closed on a in-lieu of holiday, and it is a day that the employee would normally work, a part-time employee may not be excused, under the rules for holidays, without charge to leave or loss of pay. Nevertheless, by agency policy, the part-time employee must be granted administrative leave for that day.

(5) Leave. Time off during the employee's basic work requirement is charged to the proper leave category or compensatory time or excused absence. Compensatory time for an employee on a compressed schedule is given only for irregular or occasional overtime work.

(6) Excused absence. The amount of excused absence is based on the employee's established tour of duty in effect for the period covered by the excused absence.

(7) Temporary duty and training. The work site to which the employee is sent on TDY or for training may not be on AWS. The employee should stay on the compressed schedule only if the actual work requirement on TDY or the training site allows the same number of hours of work so that the employee can fulfill the basic work requirement. Otherwise the supervisor or manager must change the employee's work schedule to meet the work requirement at the TDY site and then make up the difference or put the employee on overtime when the employee returns to the regular worksite. A third way of handling TDY or training is to put the employee on a traditional schedule of five 8-hour days for the whole pay period to avoid the complications in the two examples below:

(a) An employee on a 5-4/9 plan works during the first week of the pay period at a TDY or training location on the traditional schedule of 5 8-hour days. During that week the employee works only 40 hours instead of the 45 hours that are his or her basic work requirement for that week. On his or her return, during the second week of the pay period, the supervisor must schedule the employee to make up those 5 hours, so that he works 40 hours the second week of the pay period, thereby fulfilling the biweekly basic work requirement of 80 hours. The make up hours should be scheduled as part of the basic work requirement for the second week (otherwise they would be overtime). The employee may be scheduled to come in on a day he would normally be off or the daily work requirement for the other days may be extended (10 or 11 hours instead of 9). It is not proper to keep the employee on the compressed schedule the first week and account for the missing hour each day with administrative leave since the actual work requirement at the TDY site is not 9 hours a day.

(b) An employee on a 5-4/9 plan works his or her normal compressed schedule the first week of the pay period, 45 hours, then goes on TDY during the second week where the traditional work schedule prevails. During the second week, the employee works 40 hours for a total of 85 hours in the pay period. The extra 5 hours are overtime. The supervisor must obtain approval in the normal way to schedule overtime. If the employee is not away for the whole week, the supervisor may adjust the schedule so that the employee works fewer hours than normal, avoids overtime, and fulfills the basic work requirement. If the employee went to training, then restrictions on overtime for training apply. (See par. 4.) The employee usually cannot get overtime pay for the extra 5 hours. The way to avoid this problem is to change the schedule for the first week to require only 40 hours.

(8) Travel. Travel within the regularly scheduled administrative workweek means travel within the basic work requirement for employees on compressed schedules.

d. Flexible work schedules.

(1) Flexitime is a system of scheduling that splits the workday into two distinct kinds of time, core time and flexible time. Under flexitime, the employee must be at work during core time and must account for the total number of hours he or she is scheduled to work. There are many kinds of flexible schedules.

(2) Flexitour is an established tour of duty that differs from the official hours of work. (Shift schedules also differ from the official hours but are not flexitour schedules.) Flexitour is only a

minor variation on the traditional work schedule of 5 8-hour days. Under flexitour employees choose a fixed weekly and daily tour of duty and stay on it for long periods. Typically they may choose a different tour every 120 days although they can ask for short-term changes to meet personal needs. The starting time they choose must be within the flexible time band.

Supervisors weigh requests for short-term changes much like requests for annual leave. In most respects, pay and leave administration is the same for employees on flexitour and on traditional work schedules. The big exception is that compensatory time can be earned for both irregular or occasional overtime work and regular overtime work. (See subpars. 4d and subpar. 7d(9) below.)

(3) Other flexible schedules. In contrast to flexitour, other flexible schedules allow variation in the starting time each day and/or the number of hours worked per day or week or longer period. These other flexible schedules include the gliding schedule, the variable day schedule, the variable week schedule, and the maxiflex schedule. The rest of subpar. 6d pertains to these other flexible schedules.

(4) Tour of duty. The tour of duty is made up of all hours and days for which core time bands and flexible time bands have been designated, including those days (in a maxiflex schedule) for which only flexible hours are scheduled.

(5) The basic work requirement is the number of hours within a specific period of time that an employee must work or otherwise account for by credit hours, sick or annual leave, leave without pay, compensatory time off, or excused absence. Depending on the schedule, the basic work requirement is 8 hours in a day, 40 in a week, or 80 in a pay period. By GSA policy, all flexitime schedules for full-time employees must use one of these basic work requirements. For a part-time employee, the basic work requirement is the number of hours that an employee is required to work or otherwise account for by credit hours, sick or annual leave, etc. within a specified period of time.

(6) Credit hours. Credit hours may be worked only by employees on flexible schedules. Credit hours are hours over the basic work requirement but within the tour of duty. They are worked when the employee chooses and are not overtime hours. An employee uses credit hours to cover later absences. When credit hours are applied, there is no charge to leave for those hours; credit hours are counted as part of the basic work requirement to which they are applied. An employee is entitled to his or her basic rate of pay for credit hours. Flexible schedules may or may not provide for credit hours. The number of hours an employee can carry over from one pay period to the next is a maximum of 24, but an AWS program can provide for a lesser number. Credit hours are used much like comp time except that credit hours are not earned for overtime work whereas comp time is earned for overtime work.

(7) Overtime. Overtime hours means any hours over 8 in a day or 40 in a week that are officially ordered and approved and are in addition to the weekly or biweekly work requirement. An employee on a flexible work schedule that permits him or her to vary the length of the workday may be ordered to work more hours than planned on a specific day. In that case and when the hours ordered are not over 8 in a day or 40 in a week, the hours are not necessarily overtime. The employee may elect one of three options:

- (a) Take time off on a later workday equal to the number of extra hours worked, or
- (b) Complete the basic work requirement as scheduled. The extra hours count as credit hours, or
- (c) Complete the basic work requirement as scheduled and, when the AWS program permits, the hours over the basic work requirement may be paid as overtime hours.

(8) Compensatory time. By GSA policy, even under flexitime, employees earn compensatory time off only for irregular or occasional overtime work. Flexible work schedule arrangements, including flexitour, may not provide for employees to earn comp time for regular overtime work or for prevailing rate employees to earn comp time for either regular or irregular or occasional overtime work. By Agency policy, an employee may earn a maximum of 10 compensatory hours off. At no time even during a week or pay period may the compensatory time balance be over 10 hours. This limit does not apply to compensatory time off for religious observances.

(9) Sunday hours for Sunday premium pay are limited to 8 hours.

(10) Holidays. The regular rules apply. An employee who works on a holiday is entitled to holiday premium pay for the hours worked up to 8. Work over 8 hours counts as overtime hours, not holiday hours worked. An employee excused on a holiday without charge to leave or loss of pay is entitled to pay for that day for 8 hours.

(11) Night hours. If the tour of duty includes 8 or more hours available for work during daytime hours, the employee is not entitled to night pay even though he or she voluntarily chooses to vary the arrival or departure time during hours for which night pay is normally required. If the core time band is during daytime hours, but the tour of duty includes less than 8 daytime hours, the employee is entitled to night pay for the difference between 8 hours and the available number of daytime hours in the tour of duty. If the core time band includes night work, the employee is entitled to night pay for any nonovertime work done at night. A part-time employee is entitled to night pay only for night work done during his or her basic work requirement.

(12) Excused absence. For employees on flexitour, the amount of excused absence is based on the fixed tour of duty. Employees on gliding, variable day, variable week, or maxiflex schedules may vary their starting and stopping times daily as well as their number of hours. Hence a method is needed for determining the amount of excused absence. In GSA, the point of reference for determining the amount of excused absence is the official hours of work or, for someone on an uncommon tour of duty, the former fixed hours of work. AWS programs must not provide for granting excused absence based on individual daily work patterns such as constant pattern of arrival, predominant pattern of arrival, or variable pattern of arrival.

(13) Leave. Time off during the employee's basic work requirement must be charged to the right type of leave unless the employee is authorized compensatory time off. An employee may choose to charge time off during a flexible time band to an appropriate leave category. There is no requirement that the employee use the flexible time bands for medical or dental appointments, or other personal matters instead of taking annual or sick leave. An employee may use credit hours instead of using up annual or sick leave to take time off during flexible hours for purposes for which annual and sick leave may be granted.

(14) Temporary duty. If an employee covered by a flexible schedule is assigned to a temporary duty station using another schedule, either traditional or alternative, the employee will follow the schedule used at the temporary worksite. If the TDY assignment is for only part of an administrative workweek, the supervisor must adjust the usual alternative schedule to meet the actual work requirements that week but does not have to adopt the work schedule of the TDY site.

(15) Travel. Time spent traveling away from the official duty station during the hours and days of an employee's regularly scheduled administrative workweek is considered hours of employment. Employees on gliding, variable day, variable week, or maxiflex schedules may vary their starting and stopping times daily as well as their number of hours. Hence, a method is needed for determining the hours and days of their regularly scheduled administrative workweek in order to tell whether travel time falls within it. In GSA, the point of reference for determining the amount of excused absence is the official hours of work or, for someone on an uncommon tour of duty, the former fixed hours of work. AWS programs must not provide for counting travel time as hours of work based on individual daily work patterns such as constant pattern of arrival, predominant pattern of arrival, or variable pattern of arrival.

e. Maxiflex schedule for the SES. The maxiflex schedule for members of the Senior Executive Service in GSA has the following characteristics:

- (1) It contains a basic work requirement of 80 hours in a pay period;

(2) Flexible time bands from 6 a.m. to 9 p.m. Monday through Friday;

(3) There are no core time bands; and

(4) There is no accrual, accumulation or use of credit hours.

(5) Since the maxiflex schedule for SES members does not have a core time, SES members do not have a fixed time to report to work as long as they meet the requirements of (1) above. They do not have to report for work on all 10 workdays in a pay period if they can complete 80 hours in fewer days. However, they are expected to exercise good judgment in setting their work schedules so as to carry out the public business.

(6) Officials to whom SES members report have the authority to establish or to decline to establish a maxiflex schedule in their organizations and may eliminate the maxiflex schedule at will. Only SES members who volunteer for it are eligible for the maxiflex schedule.

8. Other than full-time permanent employment (OTFIP). Part-time, seasonal, on call, and intermittent employment affects time and leave administration, benefits, service credit, retention standing, and many other aspects of personnel administration. See FPM Chapter 340 for a full description of these programs. The discussion here is primarily on time and leave administration and secondarily on when changes in work schedule or hours must be documented with SF 50, Notification of Personnel Action and the proper nature of action code (NOAC).

a. Part-time employment. Part-time here means permanent part-time employment of between 16 and 32 hours per week under the Federal Employees Part-time Career Act of 1978 (for exceptions see FPM chapter 340).

(1) Tour of duty. The tour of duty is the hours of a day and the days of a week that constitute an employee's regularly scheduled workweek. Upon appointment, the employee's tour of duty must be documented on SF 50. The employee's entitlement to holiday, Sunday, or night pay and the Government's and the employee's contributions to health benefits insurance depend on the tour of duty.

(2) New or changed tour of duty. Any change in the number of hours a week must be documented on SF 50. Supervisors should send SF 52, Request for Personnel Action, to their personnel office. The SF 52 should cite Change in Hours (NOAC 782) as the nature of the action. An increase in the tour of duty over 32 hours per week may not continue for more than 2 consecutive pay periods for an employee appointed under the career part-time authority. A change of days and/or hours in a week, but the same total hours, is treated as an adjusted schedule as described in subpar. 2e. The change is shown on the T&A form. A change made during an administrative workweek is a temporary change as described in subpar. 2e.(3).

(3) Change to a full-time schedule. Unexpected increases in the workload may require a change to a full-time schedule either for a short time or permanently. Supervisors should send SF 52 to their personnel office. The SF 52 should cite Change in Work Schedule (NOAC 781) as the nature of the action. If the change would be a hardship to the employee, for example by disrupting school or child care arrangements supervisors should first see whether there are other ways to get the added work done. For instance, two part-time employees could share the same job to provide full-time coverage. Also, it is contrary to merit principles to appoint an individual to work part time with the intent of converting the employee to full-time after a brief interval.

(4) Movement between full-time and part-time schedules. Movement between schedules can be part of an overall strategy to minimize the need for a RIF. Organizations can encourage employees to voluntarily change from full-time to part-time or to reduce their part-time work hours. Also organizations can increase the hours of part-time work hours of part-time employees rather than hire permanent employees.

b. Intermittent employment. Intermittent employment means nonfull-time employment without a regularly scheduled tour of duty. An intermittent work schedule is appropriate for a position in which the work is sporadic and unpredictable so that a tour of duty cannot be regularly scheduled in advance. Agency officials must examine the working arrangements of intermittent employees to determine whether they are, in fact, working on a scheduled basis and are being denied leave because their work schedules have been erroneously documented. (57 Comp. Gen. 82 (1977))

(1) Changing an intermittent to part-time. When an agency schedules an intermittent employee in advance of a pay period, to work at some time during each administrative workweek for than two consecutive pay periods, the employee must be changed from an intermittent to a part time or a full-time work schedule. The employee will then be eligible for leave and other benefits. When the employee is assigned to regularly scheduled work for a limited or specific period, a not-to-exceed date should be noted on the SF 50. (Otherwise the employee cannot afterwards return to intermittent status without using reduction in force procedures). Supervisors should send an SF 52 to their personnel office citing Change in Work Schedule (NOAC 781) as the nature of the action.

(2) An intermittent employee is not entitled to annual or sick leave or holiday or Sunday pay because the employee does not have a regularly scheduled tour of duty.

(3) Night pay is payable for regularly scheduled work at night. Although intermittents do not have a regular schedule, they are eligible for night pay if they were called in (scheduled to work) before the beginning of the administrative workweek. If they are called in during the administrative workweek, they are not eligible for night pay. For example, an intermittent is notified on Saturday to come in on the Tuesday during night hours. (Night hours for GS employees are 6 p.m. to 6 a.m.) The employee is eligible for night pay. The supervisor should mark the T&A form to show that the intermittent employee was scheduled before the administrative workweek. Another employee notified on Monday to come in on Tuesday to work on the same shift as the first employee is not eligible for night pay. To avoid this inequity supervisors should try to notify intermittents before the administrative workweek. This will not always be possible. By definition the work of the work of intermittents is unpredictable.

c. On-call employment. An on-call employee works on an as needed basis during periods of heavy workload, with an expected cumulative service period of at least 6 months in pay status each year. An on-call employee works a regularly scheduled tour of duty while in pay status. The tour of duty is normally full-time but it may also be part-time.

(1) On-call employees are appointed normally, for instance with a career conditional appointment and the appropriate work schedule. He or she is placed in nonpay status with MOAC 430, Placement in Nonpay Status and recalled to duty with NOAC 280, Placement in Pay Status, under his or her established conditions of employment.

(2) As full-time vacancies occur, an on-call employee moves into the year-round work force in accordance with his or her established conditions of employment. For this reason, the on-call concept works best when it is an agency's primary source of career entry into the occupations and grades for which it is used. The change from on-call to year-round should be requested on SF 52 citing Change in Work Schedule (NOAC 781) as the nature of action.

d. Seasonal Employment. Seasonal employment means recurring periods of work lasting less than 12 months each year. Seasonal employees are placed on nonduty/nonpay status and recalled to duty under preestablished conditions of employment. A seasonal employee may work on a full-time, part-time, or intermittent work schedule during the season. The work schedule is established upon appointment. It may be changed with NOAC 781, Change in Work Schedule. During the season, the rules on hours of duty are the same for full-time, part employees, or intermittent employees as for year-round employees on corresponding work schedules.

## Appendix A - Required Forms

### MODIFIED WORK AGREEMENT FLEXIBLE WORKPLACE PROGRAM (Work At Home)

The following constitutes an agreement between

\_\_\_\_\_  
(Supervisor)                      (Employee)

1. Employee volunteers to participate in the program. and to adhere to applicable policies, guidelines, and procedures. Agency concurs with employee participation and agrees to adhere to applicable policies, guidelines and procedures.
2. Participation in the program will last \_\_\_\_\_ commencing on \_\_\_\_\_ and ending on \_\_\_\_\_.
3. Employee's official tour of duty and duty station will be: \_\_\_\_\_ to \_\_\_\_\_ on \_\_\_\_\_, (including a one-half hour nonpaid lunch period) on \_\_\_\_\_ (e.g., 8 a.m. to 4.30 pm. Monday, Wednesday and Friday).
4. Employees official duty station is \_\_\_\_\_.

The alternate duty station (the location in which the employee is designated to work while not at the official duty station) is: \_\_\_\_\_.

All pay, leave, and travel entitlements will be based on the employee's official duty station.

5. Employee's timekeeper have a copy of the employees flexiplace schedule. Employee's time and attendance will be recorded as performing official duties at the official duty station.
6. If leave is taken, employee will notify the supervisor following the established office procedures.
7. Employee will continue to work in pay status while working at his/her residence. If employee works overtime that has been ordered and approved in advance, he/she will be compensated under 5CFR Part 550, Subpart A, Subchapter 1-3.
8. If employee borrows Government equipment, employee will borrow and protect the Government equipment in accordance with agency policy and procedures. Government-owned equipment will be serviced and maintained by the Government. If employee provides own equipment he/she is responsible for servicing and maintaining it.
9. The Government retains the right to inspect the home worksite to ensure proper maintenance of Government-owned property and safety standards, provided the employee is given at least 24 hours advance notice.
10. The Government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using Government equipment in the employee's residence, except to the extent the Government is held liable by Federal Tort Claims Act or claims arising under the Military Personnel and Civilian Employees Claims Act.
11. The Government will not be responsible for operating, maintenance, or any other costs (eg., utilities) whatsoever associated with the use of the employee's residence.
12. Employee is covered under Federal Employee's Compensation Act if injured in the course of actually performing official duties at the official alternate work site. Any accident or injury occurring at the alternate duty station must be brought to the immediate attention of the supervisor. Because an employment-related accident sustained by a flexiplace employee will occur outside of the premises of the official duty station, the supervisor must investigate all reports immediately following notification.
13. Employees will meet with the supervisor to receive assignments and to review completed work as necessary or appropriate.

14. All assignments will be completed according to the mutually agreed upon work procedures, guidelines and standards stated in the employees performance plan.
15. Supervisor will monitor employee's productivity. Employee's productivity will be evaluated on criteria and milestones determined by the supervisor.
16. Time spent and quality of products will be measured by correlation with previous and similar efforts. For those assignments without precedent or without standards, regular and required progress reporting by the employee will be used by the supervisor to rate the job performance and establish standards.
17. Employees will apply approved safeguards to protect Government/agency records from unauthorized disclosure or damage and will comply with Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-679, codified at Section 552a, Title 5 U.S.C.
18. Employees most recent performance rating was at least fully successful.
19. Employee's current performance plan and subsequent rating contains performance standards covering work completed at the traditional office, is well as work completed at the employee's residence.
20. Management has the right to terminate this agreement if time spent and quality of work products are unsatisfactory when measured against previous and similar efforts and or/participation becomes administratively burdensome to the supervisor.

Supervisor	Date
Employee	Date
Agency/Regional Program Coordinator	Date Reviewed
Comments	

GENERAL SERVICES ADMINISTRATION

GSA Form 3654 (5-95)

**MODIFIED TELECOMMUTER WORK AGREEMENT  
FOR TELEWORK CENTER**

The following constitutes an agreement between

\_\_\_\_\_  
(Supervisor)\_\_\_\_\_  
(Employee)

1. Employee volunteers to participate in the program, and to adhere to applicable policies, guidelines, and procedures. Agency concurs with employee participation and agrees to adhere to applicable policies, guidelines and procedures.

2. Employee agrees to participate in the program for a period not to exceed \_\_\_\_\_ beginning on \_\_\_\_\_ and ending on \_\_\_\_\_.

3. Employee's official tour of duty will be: \_\_\_\_\_ to \_\_\_\_\_ (including a one-half hour nonpaid lunch period) on \_\_\_\_\_ (e.g., 8 a.m. to 4.30 pm. Monday, Wednesday and Friday).

4. Employees official duty station is \_\_\_\_\_.

The alternate duty station (the location in which the employee is designated to work while not at the official duty station) is: \_\_\_\_\_.

All pay, leave, and travel entitlements will be based on the employee's official duty station.

5. Employee's timekeeper have a copy of the employees telecommuting center schedule. Employee's time and attendance will be recorded as performing official duties at the official duty station.

6. Employee must obtain supervisory approval before taking leave in accordance with established office procedures. By signing this form, employee agrees to follow established procedures for requesting and obtaining approval of leave.

7. Employee will continue to work in pay status while working at telecommuting center. If employee works overtime that has been ordered and approved in advance, he/she will be compensated in accordance with applicable law, regulations, and Federal Personnel Manual guidance. The employee understands that the supervisors will not accept the results of unproved overtime work and will act vigorously to discourage it. By signing this form, employee agrees that failing to obtain proper approval for overtime work may result in removal from the Telecommuting Center Project or other appropriate action.

8. If employee borrows Government equipment, employee will borrow and protect the Government equipment in accordance with agency policy and procedures. Government-owned equipment will be serviced and maintained by the Government. If employee provides own equipment he/she is responsible for servicing and maintaining it.

9. Employee is covered under Federal Employee's Compensation Act if injured in the course of performing official duties at the official duty station or the alternate duty station.

10. Employee will meet with supervisor to receive assignment and to review completed work as necessary or appropriate.

11. Employee will complete all assigned work according to work procedures mutually agreed upon by the employee and the supervisor and according to guidelines and standards stated in the employee's performance plan.

12. Employee's job performance will be evaluated on criteria and milestones determined by the supervisor.

13. The evaluation of the employees job performance will be based on norms or other criteria derived from past performance, occupational standards, and/or other standards consistent with these guidelines. For those assignments without precedent or without standards, regular and required progress reporting by the employee will be used by the supervisor to rate job performance. Employee and supervisor agree to complete and submit evaluation materials promptly.

14. At intervals specified by the General Services Administration project management team, the supervisor and employee will participate in evaluation activities designed to measure project performance. Employee and supervisor agree to complete and submit evaluation materials promptly.

15. Employees most recent performance rating of record must be, at least, fully successful.

16. Employee's current performance plan contains performance standards covering work completed at the office (official duty station) as well as work completed at the telecommuting center (as warranted).

17. Employee will apply approved safeguards to protect Government/agency records from unauthorized disclosure or damage, and will comply with Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-679, codified at Section 552a, Title 5 U.S.C.

18. Employee may terminate participation in this project at any time. Management has the right to remove the employee from the telecommuting project when performance declines or the arrangement no longer benefits the organization. Persistent failure of the employee to meet expectations after fair warning is grounds for removal. Such removals must be done in accordance with established administrative procedures and union-negotiated agreements, as applicable.

\_\_\_\_\_  
Supervisor\_\_\_\_\_  
Date\_\_\_\_\_  
Employee\_\_\_\_\_  
Date

Agency/Regional Program Coordinator	Date Reviewed
Comments	

GENERAL SERVICES ADMINISTRATION

GSA Form 3654A (5-95)

WORK AT HOME PROGRAM  
SAFETY CHECKLIST  
EMPLOYEE CERTIFICATION

NAME	AGENCY	
SERVICE	CORR. SYMBOL CODE	BUSINESS TELEPHONE
OFFICIAL DUTY STATION	ALTERNATE DUTY STATION	AGENCY/REGIONAL
COORDINATOR		

**SAFETY CHECKLIST -- WORK AT HOME PROGRAM  
EMPLOYEE CERTIFICATION**

NAME: \_\_\_\_\_ CODE NUMBER: \_\_\_\_\_  
 AGENCY: \_\_\_\_\_ AGENCY SUBCOMPONENT: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ CITY AND STATE: \_\_\_\_\_  
 BUSINESS TELEPHONE: \_\_\_\_\_ AGENCY COORDINATOR: \_\_\_\_\_

Dear Flexiplace Participant,

The following checklist is designed to assess the overall safety of the alternate worksite. Each participant should read and complete the self certification safety checklist. Upon completion, the checklist should be signed and dated by the participating employee and immediate supervisor.

The alternate worksite is \_\_\_\_\_ Describe the designated work area \_\_\_\_\_

1. Is the space free of asbestos containing materials? Yes No
2. If asbestos containing material is present, is it undamaged and in good condition? \* Only check If applicable Yes No
3. Is the space free of indoor air quality problems? Yes. No
4. Is the space free of noise hazards (in excess of 85 decibels)? Yes No
5. Is there a potable (drinkable) water supply? Yes No
6. Is adequate ventilation present for the desired occupancy? Yes No
7. Are lavatories available with hot and cold running water? Yes No
8. Are all stairs with 4 or more steps equipped with handrails? Yes No
9. Are all circuit breakers and/or fuses in the electrical panel labeled as to intended service? Yes No
10. Do circuit breakers clearly indicate if they are in the open or closed position? Yes No
11. Is all electrical equipment free of recognized hazards that would cause physical harm (frayed wires, bare conductors, loose wires, flexible wires running through wall, exposed wires fixed to the ceiling)? Yes No
12. Will the building's electrical system permit the grounding of electrical equipment? Yes No
13. Are aisles, doorways, and corners free of obstructions to permit visibility and movement? Yes No
14. Are file cabinets and storage closets arranged so drawers and doors do not open into walkways? Yes No
15. Do chairs have any loose casters (wheels)? Are the rungs and legs of chairs sturdy? Yes No
16. Is the office overly furnished? Yes No
17. Are the phone lines, electrical cords, and extension wires secured under a desk or alongside a baseboard? Yes No
18. Is the office space neat, clean and free of excessive amounts of combustibles? Yes No
19. Are floor surfaces clean, dry, level, and free of worn or frayed seams? Yes No



20. Are carpets well secured to the floor, and free of frayed or worn seams? Yes No

\_\_\_\_\_  
Employee Signature Date

\_\_\_\_\_  
Immediate supervisor's signature Date  
approved/disapproved

SPECIAL NOTE: SUPERVISORS ARE ENCOURAGED TO CONDUCT AN ON-SITE INSPECTION FOR ANY EMPLOYEE CHECKING 5 OR MORE NO ANSWERS. EMPLOYEES ARE RESPONSIBLE FOR INFORMING THEIR SUPERVISOR OF ANY SIGNIFICANT CHANGE.

\_\_\_\_\_  
COMMENTS

GENERAL SERVICES ADMINISTRATION

GSA FORM 3656 (5-95)

**SUPERVISORY - EMPLOYEE CHECKOUT LIST**

AGENCY \_\_\_\_\_

NAME OF FLEXIPLACE EMPLOYEE | NAME OF IMMEDIATE SUPERVISOR

The following checklist is designed to ensure that your flexiplace employee is properly oriented to the policies and procedures of the Flexiplace Program. Questions 4, 5, and 6 may not be applicable to your flexiplace employee. If this is the case, simply state non-applicable or n/a.

ITEM | DATE COMPLETED

1. Employee/Supervisor have read agency policy and procedures |

of the program. |

|

|

2. Employee has been provided with a schedule of core hours. |

|

|

3. Employee has been issued/has not been issued equipment. |

(If no equipment has been issued please mark n/a and go |

to question no. 6.) |

|

|

4. Equipment issued by the agency is documented. |

|

Check as applicable: Yes No |

|

a) computer \_\_\_\_ \_\_\_\_ ↓

b) modem \_\_\_\_ \_\_\_\_ ↓

c) fax machine \_\_\_\_ \_\_\_\_ ↓

d) telephone \_\_\_\_ \_\_\_\_ ↓

e) desk \_\_\_\_ \_\_\_\_ ↓

f) chair \_\_\_\_ \_\_\_\_ ↓

g) other \_\_\_\_ ↓

\_\_\_\_\_

|

5. Policies and procedures for care of equipment issued by the |

agency have been explained and are clearly understood. |

\_\_\_\_\_

|

6. Policies and procedures covering classified, secure, or privacy |

act data have been discussed, and are clearly understood. |

\_\_\_\_\_

|

7. Requirements for an adequate and safe office space and/or area |

have been discussed, and the employee certifies those |

requirements are met. |

\_\_\_\_\_

|

8. Performance expectations have been discussed and are clearly |

understood. |

\_\_\_\_\_

|

9. Employee understands that the supervisor may terminate |

employee participation at any time, in accordance with |

established administrative procedures and union-negotiated |

agreements. |

\_\_\_\_\_

|

10. Employee/Supervisor have participated in training. |

\_\_\_\_\_

SUPERVISOR SIGNATURE | EMPLOYEE SIGNATURE

|

|

\_\_\_\_\_

---

---

\_\_\_\_\_ to \_\_\_\_\_, between \_\_\_\_\_

General Services Administration, is extended. The now arrangement will last \_\_\_\_\_ commencing on \_\_\_\_\_ and ending on \_\_\_\_\_.

\_\_\_\_\_  
 \_\_\_\_\_ SUPERVISOR      DATE      EMPLOYEE      DATE

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## CHAPTER 13. HOLIDAYS

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## CHAPTER 13. HOLIDAYS

1. Holidays.

## a. The following are legal public holidays:

New Year's Day, January 1;  
 Birthday Of Martin Luther King, Jr., the third Monday in January;  
 Washington's Birthday, the third Monday in February;  
 Memorial Day, the last Monday in May;  
 Independence Day, July 4;  
 Labor Day, the first Monday in September;  
 Columbus Day, the second Monday in October;  
 Veterans Day, November 11;  
 Thanksgiving Day, the fourth Thursday in November; and  
 Christmas Day, December 25.

b. Any other day declared a holiday by Federal Statute or Executive order is also a holiday for purposes of pay and leave administration. (See subpar. 1c for the most common example, Inauguration Day.) Most States observe legal public holidays on the same day as the Federal holiday. In a few cases, another day is observed. The State may observe the holiday for Washington's Birthday on February 22. The State holiday for Columbus Day may be October 12. State holidays are not holidays for purposes of pay and leave administration in the Federal Government. Sometimes field offices are closed when local or foreign holidays make the transaction of Federal business impractical. Although there is no loss of pay nor charge to annual leave, the absences are charged to administrative leave. (See ch. 8 of this HB.) Discretionary early dismissal on the eve of certain holidays such as Christmas is also charged to administrative leave when carried out in accordance with agency policy. The President may declare Monday a Federal holiday when Christmas falls on Tuesday or Friday a holiday when Christmas falls on Thursday. The President may close Federal offices by executive order without proclaiming a public holiday. If offices are simply closed, absences are charged to administrative leave and the day is a holiday for purposes of pay and leave administration.

c. In the Washington metropolitan area the January 20 following the election of the President is a holiday for Federal employees scheduled to work that day. When January 20 falls on a Sunday, a later day is observed instead. Employees are entitled to holiday benefits only when the Inauguration Day holiday (January 20 or the day later observed if January 20 is a Sunday) falls on a workday. The rule about an "in lieu of" holiday when the holiday falls on a nonworkday, described in par. 4, does not apply to Inauguration Day. This holiday benefit does not apply to employees whose duty stations are in the Washington metropolitan area when they are in travel status or performing official duties away from that area. It does apply to employees whose permanent duty stations are outside the Washington Metropolitan area when they are in travel status or performing temporary duty within the metropolitan area on the Inauguration Day holiday. For this purpose, the Washington metropolitan area is defined as the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church, Virginia.

2. Effect of holidays. There are two kinds of holiday benefits. Regular pay for time not worked and holiday pay for holiday work. Holiday pay consists of regular pay and holiday premium pay for nonovertime work on a holiday. Employees may also earn overtime for overtime work on a holiday. The effect of holidays on time, leave, and pay administration depends on whether the holiday falls on an employee's regular workday and whether and how long the employee actually works that day. The type of appointment, tour of duty, and work schedule also affect employee entitlements. Nonpay status just before and after a holiday affects an employee's entitlement to regular pay for the holiday. When a holiday falls on a nonworkday, for most employees another day is observed as the holiday (See par. 4.). Holiday benefits described in par. 3 then accrue to employees in relation to the day observed in lieu of the holiday.

3. Holidays falling on workdays. When a holiday falls on an employee's regular workday, the employee is entitled either to be excused on that day without loss of pay and with no charge to leave or to be paid holiday pay, for holiday work, and/or overtime (see exception in par. d below). Holiday work is nonovertime work performed during a regularly scheduled daily tour of duty on a holiday. The employee earns holiday pay (regular pay and holiday premium pay) for any holiday work through his or her basic daily tour of duty, normally 8 hours. (An exception would be

that overtime starts after 9 or 10 hours for those on compressed work schedules with daily tours of 9 or 10 hours.) If an employee works more than the basic daily tour of duty, the employee is paid at the normal overtime rate for the added hours.

- a. Daily tour of duty covering parts of two calendar days. When an employee's daily tour of duty covers parts of two calendar days, the tour of duty that begins on a legal holiday is treated as if it were the employee's full scheduled tour of duty for the holiday. For example, an employee whose tour of duty runs from 8 p.m. to 4 a.m. would be entitled to be excused from work (if scheduled) from 8 p.m. on December 25th to 4 a.m. on December 26th for the Christmas holiday, but would work (if scheduled) from 0 p.m. on December 24th to 4 a.m. on December 25th. An employee required to work from 8 p.m. on December 25th to 4 a.m. on December 26th is entitled to holiday premium pay for 8 hours in addition to regular pay. The rule for tours that straddle two calendar days, one of which is a holiday, is different from the rule for tours that straddle two calendar days, one of which is a Sunday. Only one tour counts as the holiday. Sunday pay could be paid for two consecutive tours as long as both fall partly on Sunday.
  - b. Holiday benefits for part-time employees. Part-time employees who have a regularly scheduled tour of duty during each administrative workweek (see ch. 12) are entitled to be excused from duty without loss of pay or charge to leave on the holiday. If their services are required on that day, they earn regular pay and holiday premium pay for any time up to 8 hours. Thereafter they earn overtime.
  - c. Summer aids. Summer aids with a regular tour of duty and on an appointment that lasts more than 90 days receive holiday benefits.
  - d. Temporary employees. Temporary employees whose appointments are limited to 90 days or less or who have not been employed for a continuous period of 90 days under one or more appointments without a break in service are not excused on a holiday without loss of pay or charge to leave. When these employees are prevented from working because of the observance of a holiday, they receive no compensation for the holiday or the day observed unless annual leave is available as a result of a refund of a lump sum leave payment. In such cases, the absence is charged to annual leave. This rule applies only to regular employees paid at a per diem, per hour, or piecework rate. It does not apply to employees paid at a per annum rate. Accordingly a GS employee on a short temporary appointment as described above is excused from work on a holiday without loss of pay. A FWS employee on such a short temporary appointment is not so excused.
  - e. Intermittent employees. Intermittent employees do not have a regularly scheduled tour of duty so they are not entitled to holiday benefits.
  - f. Experts and consultants. Experts and consultants are not entitled to holiday benefits unless a provision for such benefits is included in their contracts of employment. Most of them are appointed as intermittent employees and are not entitled to holiday benefits.
  - g. Employees receiving premium pay on an annual basis for standby duty. Annual premium pay for these employees takes the place of all other premium pay except overtime pay for irregular and occasional overtime work. They are usually required to work on holidays falling within their regularly scheduled administrative workweek. For instance, fire fighters man their posts whether or not the day is a holiday. They may be excused from duty on holidays without charge to leave or loss of pay when management finds that their services are not needed. This is an extension of previous decisions of the Comptroller General that such employees may be excused from standby duty without loss of pay when it is known in advance that weather conditions, for instance, make standby duty unnecessary (56 Comp. Gen. 551 (1977)).
  - h. Employees receiving premium pay on an annual basis for administratively uncontrollable overtime (AUO). These employees get annual premium pay instead of overtime pay for irregular or occasional overtime work but only for that purpose. They are still entitled to normal premium pay for regularly scheduled overtime, night, Sunday and holiday duty or to be excused without charge to leave or loss of pay for the holiday, if otherwise eligible. Their entitlements are the same as those of similarly situated employees who do not get annual premium pay.
4. Holidays occurring on nonworkdays. When a holiday falls on a nonworkday of an employee with a regularly scheduled tour of duty, another day is observed as the holiday. This day is called an "in lieu of holiday," and we say that the other day is observed "in lieu of" the actual holiday. This phrase from the law just means that another day is observed in place of the actual holiday. Some employees are not eligible for an in lieu of holiday. Employees who are not eligible for holiday pay when holiday falls on a nonworkday. (See par 3 above.) Part-time employees are not entitled to a day in lieu of a holiday that falls outside their basic workweek. Part-time employees generally must take annual leave or leave without pay when the workplace is closed, for instance on a Monday in observance of a holiday falling on a Sunday. As a rule, part-time employees are not authorized "in lieu of holidays", but agencies have discretion to grant part-time employees administrative leave for such days, within their regularly scheduled administrative workweek, if their workplace is closed to observe an in lieu of holiday (63 Comp. Gen. 306 (1984)). In GSA part-time employees must be granted administrative leave when their workplace is closed to observe a day in lieu of a holiday.
- a. Normal tour of duty. For an eligible employee whose basic workweek is Monday through Friday, a holiday falling on Sunday is observed the following Monday (EO 11582). A holiday falling on Saturday is observed on the preceding Friday (5 U.S.C. 6103(b)(1)).
  - b. Uncommon tour of duty. For an employee whose basic workweek is on days other than Monday through Friday, the day observed as a holiday is determined as follows:
    - (1) For an employee whose basic workweek includes a Saturday:
      - (a) If the holiday falls on a Sunday, the next workday is observed as the holiday (EO 11582).
      - (b) If the holiday falls on a Monday, the preceding workday is observed as the holiday (5 U.S.C. 6103(b)(2)).
    - (2) For an employee whose basic workweek includes a Sunday:
      - (a) If the holiday falls on a day administratively scheduled as the employee's regular nonworkday in place of Sunday, then the next workday is observed as the holiday (EO11582).
      - (b) If the holiday falls on a nonworkday not scheduled as a nonworkday in place of Sunday, then the preceding workday is observed as the holiday (5 U.S.C. 6103(b)(2)).
  - c. The table below, derived from the rules in par. a and b. above, shows the day on which an employee is excused without loss of pay or charge to leave when the holiday falls on the employee's days off during the week. The day observed as a holiday, shown in the third column, is a day within the same administrative workweek. If the employee must work on a day when he or she is normally excused, he or she is entitled to holiday pay (regular pay and holiday premium pay) for the holiday.

<u>Holiday</u>	<u>Days Off</u>	<u>Excused On</u>
Sunday	Sunday and Monday	Tuesday
Sunday	Saturday and Sunday	Monday
Monday	Sunday and Monday	Saturday
Monday	Monday* and Tuesday	Wednesday

Tuesday	Monday* and Tuesday	Sunday
Tuesday	Tuesday* and Wednesday	Thursday
Wednesday	Tuesday* and Wednesday	Monday
Wednesday	Wednesday* and Thursday	Friday
Thursday	Wednesday* and Thursday	Tuesday
Thursday	Thursday* and Friday	Saturday
Friday	Thursday* and Friday	Wednesday
Friday	Friday* and Saturday	Sunday
Saturday	Friday* and Saturday	Thursday
Saturday	Saturday and Sunday	Friday

\*Regular weekly nonworkday administratively scheduled for the employee instead of Sunday

d. The effect of absence in nonpay status on regular pay for the holiday.

(1) An employee in pay status either just before or just after a holiday is entitled to regular pay for the holiday regardless of whether he or she is on authorized leave-without-pay (LWOP) or is absent-without-leave (AWOL) for the day immediately after or before the holiday. Immediately before or after means the last status, usually in the last hour before or the first hour after the holiday. When leave is charged in increments of less than one hour, the final increment is controlling. As long as the employee is in pay status either just before or just after the holiday, the law presumes that he or she would have worked on the holiday if it had been a regular working day (56 Comp. Gen. 393 (1977)).

(2) An employee in nonpay status both just before and just after a holiday may not receive compensation for a holiday on which he or she performed no work. In this case, the law presumes that the employee would not have worked on the holiday if it had been a regular working day. In other words the employee is not paid if the holiday falls within a period of nonpay status. B-187520, February 22, 1977.

(3) The following table explains the rules in (1) and (2) above:

<u>Before</u>	<u>After</u>	<u>Regular Pay</u>
Pay Status*	AWOL	Yes
Pay Status*	LWOP	Yes
LWOP	Pay Status*	Yes
AWOL	Pay Status*	Yes
LWOP	LWOP	No
AWOL	AWOL	No
LWOP	AWOL	No
AWOL	LWOP	No

\*Pay status means either duty status or leave with pay

e. Effective date of new-hire appointments on holiday benefits. If the first day that a new-hire appointee reports to work is the Tuesday following a holiday on Monday, then the effective date of the appointment determines the employee's entitlement to regular pay for the holiday. When an employee is appointed on a nonworkday such as Sunday rather than on the first workday of the pay period, the employee benefits from the Monday holiday. When an employee is appointed on the first workday that he or she reports for work, in this instance Tuesday, the employee is not entitled to regular pay for the preceding holiday. An appointment on the first workday also affects the computation of the end of the waiting period for within-grade increases.

5. Authority to require work on holidays.

a. Officials delegated authority to order or approve overtime pay have the authority to require employees to work on a holiday in case of necessity or emergency (22 Comp. Gen. 762 (1942)).

b. Unwarranted absence. An employee absent without authorization when work was required on a holiday may be deprived of all pay, including straight time pay, for that day. There is no requirement that the absence be excused or that the employee be paid regular compensation for that day. The agency is also not required to charge the absence to annual leave but may place the employee on LWOP or even AWOL. Deducting pay (by using the timecard) because the employee refused to work that day is not an adverse action (a suspension) because the employee failed to report for duty. Any suspension or other disciplinary action that might result is handled under adverse action procedures. If the official with delegated authority to order or approve overtime later finds that the employee had a valid reason for the absence, it may be considered to have been authorized, and the employee may receive straight time pay. The time card can be amended to cancel the charge to leave (44 Comp. Gen. 274 (1964)).

6. Holiday pay.

a. Holiday pay consists of regular pay and premium pay earned for nonovertime work that an employee is required to perform on a holiday. Regular pay is the amount received when an employee is excused without loss of pay or charge to leave. An employee earns holiday premium pay for non-overtime work he or she has to perform on a holiday up to 8 hours (9 or 10 hours if on a compressed work schedule). Beyond 8 hours, the employee earns overtime pay as compensation for overtime work performed on a holiday. Hence overtime pay is not part of holiday pay.

b. For a GS or GM employee holiday premium pay is equal to the rate of basic pay. Overtime, night, and Sunday pay is not part of an employee's rate of basic pay in computing the employee's holiday premium pay. Holiday premium pay is not used as part of an employee's rate of basic pay in computing the employee's overtime, night, or Sunday pay. For instance, an employee who normally works nights and gets night pay gets regular pay (basic pay plus night pay) when excused for a holiday. If the employee works the night shift instead of being excused, holiday premium pay does not include night pay. In other words, night pay is paid only once, even when the employee works on the holiday. If an employee performs holiday work, then the employee will get at least 2 hours of holiday premium pay even though he or she does not work that long.

c. For a wage system (PWS) employee, basic pay includes the night shift differential. Holiday premium pay for work on a holiday also includes the night differential. In other words, the night shift differential is paid twice when the employee works on the holiday, once as part of regular pay and once as part of holiday premium pay.

**CHAPTER 14. Reserved.**

**CHAPTER 15. Reserved.**

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